UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2016/088
Judgment No.: UNDT/2018/082
Date: 20 August 2018
Original: English

Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

ABBAS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Robbie Leighton, OSLA

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

Introduction

1. By application filed on 4 October 2016, the Applicant contests the decision not to recruit him on a P-4 temporary job opening ("TJO") as Administrative Officer at the United Nations Interim Security Force for Abyei ("UNISFA").

2. The Respondent filed his reply on 7 November 2016.

Facts

3. The Applicant joined the United Nations in March 2012. Since 5 June 2014, he has been employed as a P-3 Budget Officer in the United Nations Assistance Mission in Afghanistan ("UNAMA") on a fixed-term appointment.

4. The TJO for the P-4 post of Administrative Officer, UNISFA, was published with an application deadline of 22 April 2015. The Applicant applied to it on 21 April 2015.

5. According to the Management Evaluation Unit ("MEU"), a list of candidates was sent to the then Chief of Mission Support ("CMS"), UNISFA, on 27 April 2015. The then CMS, UNISFA, was on sick leave at the time but conveyed the decision concerning the selection of Ms. S to the then Chief, Human Resources Officer ("CHRO"), UNISFA on 30 April 2015.

6. By email of 12 May 2015, the then CHRO asked Ms. S. to send her a copy of her national passport, in order to request a Sudanese Visa. The email did not refer to Ms. S.'s selection.

7. By inter-office memorandum dated 15 May 2015, the Officer-in-Charge, Mission Support Division ("OIC, MSD") informed the then CHRO, UNISFA, that Ms. S. had been selected for the post, and asked her to transmit the decision to the Regional Service Centre Entebbe ("RSCE") for the on-boarding process of Ms. S.

8. By email of 5 June 2015, the OIC, MSD, asked the then CHRO to put the recruitment process for the post on hold and to forward the evaluation report and all relevant documents for his review.

9. By inter-office memorandum dated 15 June 2015, the OIC, MSD, sought the approval of the Head of Mission for the selection of the Applicant, stressing that the previous selection contained in the memorandum of 15 May 2015, namely that of Ms. S., had been cancelled and had not been endorsed by the Head of Mission. The Head of Mission approved the selection of the Applicant by signature of 16 June 2015.

10. According to the MEU, Ms. S. forwarded copies of her national passport to the CHRO on 16 June 2015.

11. On 17 June 2015, the then CHRO sent an email to the then CMS, informing him that the OIC, MSD, had cancelled the recruitment of Ms. S. and had instructed to select the Applicant for the post. By email of the same day, the then CMS requested that the recruitment of the Applicant be put on hold. He further sent an email to the Under-Secretary-General, Department of Field Support ("DFS"), informing him that, prior to his departure from the Mission, he had initiated the recruitment of Ms. S. and that the OIC, MSD, had stopped Ms S.'s recruitment and instead initiated the recruitment of the Applicant without consulting him.

12. By email of 23 June 2015, a Human Resources Assistant, RSCE, informed the Applicant of his selection, and asked him to provide some additional information and documents. She noted that his selection would be confirmed and his offer of appointment processed upon receipt of the requested information and documents. The email specifically stated that it did not constitute an offer.

13. On 26 June 2015, the Human Resources Assistant, RSCE, emailed the CMS, UNAMA, a memorandum of the same date requesting the Applicant's release on assignment. This email was copied *inter alia* to the Applicant. In addition to the memorandum, which the CMS, UNAMA, had to sign to formalize the Applicant's release on assignment, other documents were attached to the email in question, amongst which was an "acceptance memorandum" that the Applicant had to sign. The acceptance memorandum informed the Applicant that he had been selected for the contested post "subject to medical clearance, CDU clearance and release by [his] Office". It further stated that the Applicant's "selection for [that] mission [would] become final on receipt of [his] Office's approval" and that his assignment

would be at the Applicant's "current P-3 level and that he may be eligible for special post allowance ("SPA") at P-4 level, subject to the approval of SPA panel".

14. The CMS, UNAMA, approved the request for release by signing the above-mentioned memorandum on 5 July 2015.

15. By email of 3 July 2015, the Applicant returned the duly signed acceptance memorandum to the RSCE, confirming his acceptance of the temporary assignment with UNISFA. That memorandum's section entitled "ACCEPTANCE" read as follows:

> I hereby accept this temporary assignment at my current P-3 level and the above-mentioned terms and conditions specified herein, subject to any modifications to the Staff Regulations and Rules. I understand that I may be eligible for SPA at P-4 level subject to the approval of SPA panel. I understand that subject to the request of the mission and concurrence from my parent office, my mission assignment may be extended up to a maximum of two years only.

16. The Applicant forwarded to UNISFA his check-out memorandum from UNAMA by email of 13 July 2015.

17. The OIC, HR, UNISFA, sent an email to the Applicant on 15 July 2015, informing him that his visa request had been submitted already and was pending approval with the Government of Sudan.

18. On 23 July 2015, the Applicant was informed that his medical clearance was still valid.

19. By email of 1 September 2015, a Human Resources Officer, UNAMA, wrote to UNISFA asking for an update on the status of the Applicant's visa request. An Administrative Officer, Human Resources, UNISFA, responded on the same day, noting that they had not received any visa approval from the Government of Sudan yet and that RSCE would not start the on-boarding without such approval. It appears that the Sudanese government issued the Applicant's visa in December 2015.

20. By fax dated 16 December 2015, the then CMS, UNISFA, requested the approval of the Director, Field Personnel Division ("FPD"), DFS, "to proceed with the recruitment" of the initially-selected candidate, Ms. S.

21. By email of 13 January 2016, a Human Resources Officer, Career Support Unit, FPD, DFS, informed the then CMS, UNISFA, that FPD agreed with the selection of Ms. S. and that the Mission could proceed accordingly. The then CMS, UNISFA, responded by email of the same date, noting that they would "proceed accordingly".

22. An offer of appointment was sent to Ms. S. in January 2016 and she was on-boarded on 3 March 2016.

23. By email of 28 March 2016, the Applicant requested an update regarding the status of his visa and when the on-boarding process would start.

24. The Administrative Officer, HR Section, UNISFA, responded to the Applicant by email of 29 March 2016, informing him of the following:

> Please note that in accordance with FPD's fax on 'Consultation Process for the Selection of Key Leadership Positions in the Support Component', UNISFA shared all relevant recruitment documents with FPD. This fax clearly states that following the advertisements through a Recruit from Roster (RfR), Position Specific Job Opening (PSJO), or Temporary Job Opening (TJO), Missions should submit to FPD list(s) of screened-in and recommended candidate(s) for the senior support positions for review prior to selection by the Missions. The key leadership positions include the post of Administrative Officer (P-4), as well.
>
> Please note that given that recommendation on your selection was made during the absence of the Hiring Manager and as per the guidelines received from FPD on selection of key leadership positions (fax referred above), the list of recommended candidates was submitted to FPD for review. FPD agreed to the selection of the candidate recommended by the Hiring [Manager] (CMS).
>
> In view of the above, we regret to inform you that we are unable to proceed with on-boarding process.

25. The Applicant filed a request for management evaluation of that decision on 23 May 2016. Having received no response, he filed the present application on 4 October 2016.

26. The Under-Secretary-General for Management responded to the Applicant's request for management evaluation on 31 October 2016, informing him that the decision had been upheld.

Proceedings before the Tribunal

27. By Order No. 222 (GVA/2017) of 28 November 2017, the parties were convoked to a case management discussion ("CMD"), which took place on 16 January 2018. At the CMD, the parties agreed to attempt to settle the matter amicably. They however informed the Tribunal on 19 March 2018 that there was no scope for informal resolution of the case. Consequently, another CMD was held on 25 April 2018, during which the parties informed the Tribunal that they did not see a need for a hearing in this matter.

28. By Order No. 88 (GVA/2018) of 26 April 2018, the Respondent was ordered to file additional documents, which he did on 11 May 2018 and both parties were requested to file comments on specific issues outlined therein. The Respondent did not file any comments and the Applicant filed them on 29 May 2018.

Parties' submissions

29. The Applicant's principal contentions are:

a. UNISFA unlawfully and unilaterally breached and repudiated a binding contract after the Applicant had unconditionally accepted the offer and satisfied all its conditions on 3 July 2015;

b. The FPD facsimile of 16 November 2015 cannot represent a lawful basis for withdrawing the Applicant's offer of appointment; it does not have the force of law, and even if it had, it was issued more than five months after the creation of a contractual relationship between the Applicant and UNISFA;

retroactive application of rules is unlawful; the retroactive application of a document that does not have the force of law is even more concerning;

c. Further, the contested post does not fall within the provision of FPD's facsimile, which—unlike subparas. "a" to "e"—under subpara. "f", qualifies that it applies to the post of Administrative Officer P-4 only in three Missions, listed in the brackets "(UNRCCA, SESG-Yemen, OSE-Syria)"; this qualification presumably relates to the size of those Missions and correspondingly the authority of the P-4 Administrative Officer in them; the fax does not apply to the Administrative Officer, P-4, in UNISFA;

d. On the basis of the clear representation by UNISFA, the Applicant had a legitimate expectation to be employed on the P-4 post; he relied thereon and asked to be released from his employment, submitted documentation to UNISFA and for a prolonged period of time refrained from seeking alternative employment; even if the Applicant was not found to have an express contractual relationship with UNISFA, the latter created a legitimate and enforceable expectation of employment; and

e. As remedies, the Applicant requests damages for the breach of contract and loss of earnings, as well as loss of opportunity to improve his career prospects; the pecuniary loss can be measured by the net base salary differential between the two posts by payment of a special post allowance ("SPA") for nine months; the assignment to higher level functions with higher pay creates a self-evident benefit warranting compensation.

30. The Respondent's principal contentions are:

a. The Appeals Tribunal has recognized the Administration's duty to correct administrative errors as soon as it becomes aware of it to ensure equal treatment and prevent illegal situations from persisting (cf. *Cranfield* 2013-UNAT-367);

b. The selection of the Applicant was made in violation of the legal framework and resulted from an illegal process initiated by the then OIC, MSD, who acted without proper delegation of authority; the Organization was

bound to correct the error and to proceed with the on-boarding of the candidate who had been selected initially for the TJO in accordance with proper procedures;

c. The Applicant's claim of legitimate expectation is without merit; his rights were not affected by the decision not to proceed with his on-boarding: he remains employed on an FTA with UNAMA, and has provided no evidence that he relied on the information that he would be assigned to UNISFA at the P-3 level to his detriment;

d. He did not suffer any economic loss as a consequence of the decision; he remained on an FTA with UNAMA; a promotion to the P-4 level was never at stake, rather, what was at stake was merely a temporary assignment to UNIFSA at his P-3 level; because of a difference in post adjustment, his monthly net salary at UNAMA exceeds the equivalent net monthly salary that he would have received at UNIFSA; while he may have been eligible for an SPA at the P-4 level whilst on temporary assignment with UNIFSA, such would have been subject to approval by an SPA panel and thus was merely a possibility not a certainty.

Consideration

31. The Applicant contests the decision not to recruit him for the P-4 TJO of Administrative Officer at UNISFA. The Tribunal has to determine whether a valid contract existed between the Applicant and UNISFA, and, in the affirmative, whether the decision not to proceed with his on-boarding was illegal.

32. In that assessment, the Tribunal has to take into account the reasons provided to the Applicant in the contested decision. It recalls that according to the email of 29 March 2016, the Applicant's on-boarding could not proceed since the guidelines contained in the fax on *Consultation Process for the Selection of Key Leadership Positions in the Support Component* had not been followed, and when the list of recommended candidates was submitted to FPD for review, FPD agreed to the selection of "the candidate recommended by the Hiring Manager", namely Ms. S..

Jurisprudence and Legal framework

Jurisprudence

33. In assessing whether a valid contract existed between Ms. S. and UNISFA and/or the Applicant and UNISFA, the Tribunal recalls what the Appeals Tribunal held in *Gabaldon* (2011-UNAT-120), namely that:

> Unconditional acceptance by a candidate of the conditions of an offer of employment before the issuance of the letter of appointment can form a valid contract, provided the candidate has satisfied all of the conditions.

34. The Tribunal considers that for the conditions of *Gabaldon* to apply, it is necessary that the offer of employment extended to a candidate be based on a selection decision made by the person disposing of the relevant delegated authority. It therefore has to examine who, under the relevant rules, had the authority to make the selection decision, and, further, who had the authority to act as Hiring Manager.

Legal framework for delegation of authority to make the selection decision

35. The Tribunal notes that the Hiring Manager's role is generally limited to making recommendations, while the selection decision for positions up to the D-1 level is made by the Head of Office. This is reflected in sec. 9.2 of ST/AI/2010/3 (Staff selection system), which provides that "selection decisions up to and including at the D-1 level shall be made by the head of department/office on the basis of proposals made by the responsible hiring manager".

36. For peacekeeping operations and special political missions, sec. D.4 of the Standard Operating Procedure on Staff Selection System for peacekeeping operations and special political missions (SoPs) relevantly provides:

> The Head of Mission (HoM) has the overall authority at the mission level in human resources management (HRM) and the responsibility for the proper implementation of the staff selection process.

37. More specifically, sec. 7.2.2 of the SoPs states that "where the candidate proposed for selection is drawn from a nominated list of rostered candidates, the Head of Mission, within delegated authority, shall make the final selection decision upon the recommendation of the hiring manager on the candidate best suited for the position".

38. Further, under sec. 9 (Temporary Job Openings), sec. 9.4.3 provides that "[t]he hiring manager shall make a recommendation for selection taking into account the candidate's eligibility", whereas sec. 9.4.4 states that "[t]he [Head of Mission] in consultation with the hiring manager shall make a selection decision up to and including the D-1 level".

39. According to sec. 10.1.2, the Under-Secretary-General, DFS, "[d]elegates authority to recruit candidates to heads of missions, as appropriate and practicable". Further, pursuant to sec. 10.2.1, Heads of Missions make selection decisions of candidates or delegate authority for selection decisions to DMS/CMS as appropriate. Finally, and also relevantly, the organigram on selection from roster (p. 47 of the SOPs), states without any ambiguity that after the hiring manager has made a recommendation, the Head of Mission makes a selection decision.

Additional legal instruments provided by the Respondent

40. With his reply, the Respondent filed documents purportedly relevant for the examination of who had the delegation of authority in the case at hand. In examining them, the Tribunal recalls that any legal document postdating the contested decision is irrelevant for the assessment of the legality of said decision.

41. The Respondent filed a facsimile dated 22 August 2016 (Clarification on recruitment authority for UNISFA), which indicates that "UNISFA has not been delegated the authority for the recruitment of international staff members" and that "[t]his decision was made following a careful review of the situation in the Mission and to ensure that there is transparency with the process". While this memo does not apply, since it postdates by far the selection process under examination, it indicates that the decision not to delegate recruitment authority to UNISFA was based on a particular situation at the Mission, at a given time. It does not say what

the status of the delegation of authority to the Mission was at the moment of the contested decision. The same applies to the interoffice memorandum dated 13 October 2016, equally filed by the Respondent, which provides for delegation of authority to select international staff up to the D-1 level from the USG/DFS to the Director, FPD, noting that such authority had not been delegated to UNISFA.

42. The facsimile of 16 November 2015 (Consultation process for the selection of key leadership positions in the support component), referred to by the Respondent in its previous version of 2 October 2015, with respect to selection decisions for Administrative Officers at the P-4 level, equally postdates the selection decision. Further, the version of 16 November 2015 specifies that said facsimile applies only to certain Missions listed therein (UNRCCA, SESG-Yemen, OSE-Syria), but not to UNISFA. Any reference in this facsimile to a requirement of review by FPD prior to a selection by the Head of Mission is thus not relevant for the case at hand. If anything, it confirms that, as a matter of principle, it is the respective Head of Mission who makes selection decisions, unless the exception provided for under para. 3(f) of that memo applies. Precisely, that exception does not apply to UNISFA.

43. The Respondent submitted additional documents, purportedly relevant for the delegation of authority to UNISFA. The Respondent filed, *inter alia*, a facsimile dated 30 April 2015 (Delegation of authority for processing of human resources management authorities to the United Nations Interim Security Force for Abyei (UNISFA)), addressed to the Chief of Mission Support, UNISFA, by the Director, FPD, DFS. Attached to this facsimile is a list of authorities in the field of processing of human resources management that are delegated to the CMS. While that list is not exhaustive, nothing indicates that such delegation of authority to the CMS covers selection decisions. As the Appeals Tribunal held in *Bastet* 2015-UNAT-511, any delegation of authority must contain a clear transmission of authority to the grantee concerning the matter being delegated. The facsimile of 30 April 2015 does not contain such a clear delegation of the authority to make selection decisions to the CMS.

44. The Respondent also filed the SOPs on On-boarding of staff for UN peace keeping operations. These state, with respect to their scope, that they have to be read in connection with the SOPs governing recruitment and selection processes. The Respondent did not point to any particular provision in these SOPs that would indicate who had the authority to make the selection decision for the contested post.

Delegation of authority for the selection decision was with the Head of Mission

45. The Tribunal has difficulties to understand the Respondent's position with respect to who had the authority to make the selection decision, and notes that although the Tribunal had ordered the parties to file comments specifically on this matter, the Respondent did not do so.

46. The Tribunal is of the view that at the time of the contested decision, in light of the above referenced legal provisions in ST/AI/2010/3 and in the Standard Operating Procedure on Staff Selection System for peacekeeping operations and special political missions (SoPs) (particularly sec. D, para. 4; sec. 7.2.2; secs. 9.4.3, 9.4.4, and 10.1.2; as well as the organigram on p. 47 on selection from roster), the delegation of authority to make the selection decision for the TJO in question was with the Head of Mission. The latter approved the Applicant's selection on 16 June 2015. The Tribunal will examine the contractual relationship, if any, between UNISFA and Ms. S. and between UNISFA and the Applicant in light of that delegation of authority.

Did a valid contract exist between Ms. S. and UNISFA?

47. The Respondent seems to argue, on the one hand, that the CMS, as Hiring Manager, had the delegated authority to make the selection *decision*, while at the same time suggesting that such authority had not been delegated to the Mission but remained with FPD/DFS. According to him, the "notification of her selection" to Ms. S. on 12 May 2015 created a legitimate expectation of her employment with UNISFA. The MEU even stated that Ms. S. had already accepted the offer for the position and a binding contract had been in place prior to the offer of appointment made to the Applicant. The Respondent is of the view that the OIC, MSD, on the other hand, did not have the delegated authority to act as hiring manager and that

therefore, the offer subsequently made to the Applicant on the basis of the OIC recommendation had to be withdrawn. Finally, the Respondent states that the selection of Ms. S. was subsequently endorsed/approved by FPD on 13 January 2016.

48. As explained above, it is the Tribunal's view that the above referenced legal instruments do not support the Respondent's apparent position that the CMS had the delegated authority, as Hiring Manager, to make the selection *decision*. Rather, such authority remained with the Head of Mission, who never selected Ms. S. for the position. The argument that a valid selection decision and offer had already been made and notified to Ms. S. on 12 May 2015 can thus not stand. Furthermore, the Tribunal also notes that the documents on file do not show that Ms. S. received and unconditionally accepted an actual offer of appointment at the time. Rather, she was merely requested to provide copy of her passport, which she did.

49. Finally, the Tribunal notes that in the contemporaneous emails and prior to the email to Ms. S., no mention was made to a need for approval by FPD/DFS. That argument was made *post facto* and although FPD approval was sought much later in 2015, the Respondent continues to sustain that the selection of Ms. S. was communicated to her on 12 May 2015.

50. In fact, the approval of Ms. S.'s selection by FPD was sought only on 16 December 2015. The Tribunal recalls that the email of 29 March 2016 to the Applicant explicitly refers to the facsimile on *Consultation Process for the Selection of Key Leadership Positions in the Support Component*, which provides that in some instances, selection decisions for Administrative Officers (P-4) need to be approved by FPD, prior to selection by the Head of Mission. However, the Tribunal notes that not only did the facsimile postdate the selection of the Applicant, moreover, and most relevantly, pursuant to its version of 16 November 2015, the latter does not apply to selection decisions for Administrative Officer posts (P-4) at UNISFA, but only at UNRCCA, SESG-Yemen, OSE-Syria. The Tribunal observes that at the time the CMS supposedly sought FPD's approval of the recommendation to proceed with the recruitment of the initially-selected candidate, and when FPD gave that approval, the facsimile of 2 October 2015 had been superseded by the

version of 16 November 2015. The Tribunal is concerned that the Respondent provided it only with the facsimile's version of 2 October 2015, which had, at the time, already been superseded by the one of 16 November 2015 and contained said restriction.

51. The Tribunal thus concludes that in light of the foregoing, the selection of Ms. S. was *ultra vires* and that no valid contract existed between Ms. S. and UNISFA.

52. Further, and accordingly, the Tribunal is concerned that not only was the decision *ultra vires*, but also that no comparative review had been conducted at the time the "selection" of Ms. S. was made by the CMS. Indeed, in an email of 30 April 2015 from the then CHRO to the Chief Surface/Air Transport and Movement Section, the former stated that:

> I please would like you to do a comparative evaluation so that we can proceed with the recruitment of [Ms. S].

53. The Tribunal also reiterates that the Head of Mission never approved the selection of Ms. S..

Did a valid contract exist between the Applicant and UNISFA?

54. The Tribunal observes that the Applicant had been informed of his selection on 23 June 2015 and unconditionally accepted the offer by signing an acceptance of temporary assignment on 3 July 2015. He was medically cleared and issued with a Sudanese Visa. UNAMA had been requested to and confirmed his release for the temporary assignment. The Tribunal thus is of the view that the conditions set by the Appeals Tribunal in *Gabaldon* were met. The offer of appointment had been extended to the Applicant on the basis of the approval of his selection by the Head of Mission dated 16 June 2015.

55. As explained above, the Tribunal is satisfied that on the basis of the legal framework applicable at the time, the authority to make the contested selection decision had been delegated to the Head of Mission. Indeed, the Administration did not provide a contemporaneous legal document leading to conclude that the

delegation of authority to make the selection decision had not been given to the Head of Mission or even more so, that it had been granted to the CMS.

56. Accessorily, the Tribunal took note of the Respondent's argument that the CMS was the Hiring Manager and that the OIC did not have authority to act as Hiring Manager in the contested selection process. It notes, however, that it results from sec. 2.4 of ST/SGB/2015/1 (Delegation of authority in the administration of the Staff Regulations and Staff Rules) that delegation of authority is functional and not personal. Indeed, sec. 2.4 provides:

> When the official holding the delegated authority is absent, the authority shall automatically be further delegated on a temporary basis to the designated Officer-in-Charge, without limitation, unless otherwise specified in writing by the official who designated the Officer-in-Charge.

57. Thus, when the then CMS was absent on sick leave, the authority to act as hiring manager was further delegated on a temporary basis from the CMS to the OIC, MSD. However, the Tribunal notes that by email of 17 June 2015, the then CMS, after the then CHRO had informed him that "the OIC MSD ha[d] cancelled [Ms. S.]'s recruitment and ha[d] selected [the Applicant] instead", wrote the following:

> I am requesting the recruitment of the above candidate to be put on hold until further notice. No action should be taken on this recruitment. The onus is on me to decide who works in my front office.

58. Arguably, by this email, the CMS specified in writing that the authority to act as Hiring Manager was no longer further delegated to the OIC, MSD, pursuant to the last sub-sentence of sec. 2.4 of ST/SGB/2015/1. However, and relevantly, the Tribunal notes that at the time of that email, the Head of Mission had already approved the selection of the Applicant, as recommended by the OIC, MSD, who was legally acting as Hiring Manager by way of an automatic delegation of authority at that time (that is, prior to 17 June 2015). The record further indicates that the Head of Mission was aware of the previous selection recommendation of Ms. S., made by the CMS; nevertheless, he selected the Applicant.

59. It is the Tribunal's view that the decision to select the Applicant was legal and that his unconditional acceptance and fulfilling of all the conditions of the offer of appointment created a valid contract between UNISFA and the Applicant. At the very least, a legitimate expectancy was created for the Applicant that he was to be temporarily employed against a P-4 position. Therefore, the Administration's argument that it was bound to put an end to an illegal situation is equally without merit.

Remedies

60. The Tribunal notes that whilst the Applicant initially requested rescission of the contested decision, he does no longer pursue that request. He is, however, requesting damages for breach of contract, financial loss based on salary differential and for damages to career prospects.

61. The Tribunal shall examine the Applicant's claim for remedies in light of art. 10.5 of its Statute, which delineates its powers in this respect. This article provides that:

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

62. With respect to material damages, the Tribunal is not convinced by the Respondent's argument that the difference in post adjustment should be taken into account in assessing the Applicant's material damages. Post adjustment is paid to guarantee equal purchasing power for staff members working at different duty

stations, in consideration of different goods' prices levels. It can thus not be taken into account to calculate material damages incurred as a result of a loss of job opportunity at a different level and at a different duty station. For the calculation of such damages, the Tribunal can only look at the salary scales and special post allowances, if applicable.

63. In the case at hand, the Tribunal notes that had the Applicant been on-boarded for the temporary P-4 position, he might have received an SPA for a period of nine months. While this is not a certainty, as the Respondent rightly pointed out, no evidence exists, either, that such SPA would not have been granted. Under the circumstances, it is appropriate to grant the Applicant the amount of SPA at the P-4 level, for a period of nine months, in compensation for salary differential.

64. Furthermore, the Applicant requests compensation for damages to career prospects, stressing in particular that the assignment to different functions would have broadened his experience and to higher level functions would have increased his seniority for promotion purposes. The Tribunal agrees with the Applicant that these damages to his career prospects are self-evident and do not require evidence. It therefore finds it appropriate to award the Applicant an additional amount of compensation of USD1,000 for damages to career prospects. The above compensation for salary differential and career prospects fully cover any damages resulting from the breach of contract.

Conclusion

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

a. The decision not to proceed with the on-boarding of the Applicant was illegal; and

b. The Applicant is granted compensation for:

i. salary differential in the amount of nine months SPA to P-4; and

ii. for damages to career prospects in the amount of USD1,000.

(*Signed*)
Judge Teresa Bravo
Dated this 20th day of August 2018

Entered in the Register on this 20th day of August 2018
(*Signed*)
René M. Vargas M., Registrar, Geneva