UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2021/019
Judgment No.: UNDT/2022/025
Date: 17 March 2022
Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

ROLLI

v.

SECRETARY-GENERAL
OF THE WORLD METEOROLOGICAL
ORGANIZATION

JUDGMENT ON

RELIEF

Counsel for Applicant:
Robbie Leighton, OSLA

Counsel for Respondent:
Daniel Trup, WMO

Introduction

1. By Judgment No. UNDT/2021/154 dated 16 December 2021, the Tribunal found the contested decision, namely the summary dismissal of the Applicant, unlawful and ordered the parties to file their closing statements on relief. The parties did so. The Tribunal subsequently instructed the Applicant to file some additional information on his financial situation and now assesses that the case is ready for adjudication.

Consideration

The legal framework for relief before the Dispute Tribunal

2. The Statute of the Dispute Tribunal provides in art. 10.5 an exhaustive list of remedies, which the Tribunal may award:

> 5. 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 for harm, supported by evidence, and shall provide the reasons for that decision.

Rescission under art. 10.5(a) of the Dispute Tribunal's Statute

3. The Applicant principally seeks the rescission of the contested decision and reinstatement in his former post "at the same level on the same contractual modality".

4. The Tribunal notes that the contested decision to summarily dismiss the Applicant was found unlawful in Judgment No. UNDT/2021/154, because the Secretary-General of the World Meteorological Organization (**"**WMO"), in essence, took this decision without any type of forewarning and, as a result, no disciplinary process whatsoever had been undertaken leading up to the decision.

5. Considering these circumstances, the Tribunal finds that the most appropriate remedy would be to rescind the contested decision (in comparison, see *Lucchini* 2021-UNAT-1121). As for reinstating the Applicant in his former post, the Tribunal notes that this is impossible as, according to the unchallenged submission of the Respondent and the documentation on file, this post was abolished on 31 December 2019 (in line herewith, see the Appeals Tribunal in *Robinson* 2020-UNAT-1040).

In lieu *compensation under art. 10.5(a) of the Dispute Tribunal's Statute*

General principles and elements to consider when deciding the *in lieu* compensation amount

6. Under art. 10.5(a) of the Statute of the Dispute Tribunal, in cases concerning termination, like the present one, the Administration may elect to pay as an alternative to the rescission *in lieu* compensation.

7. In *Laasri* 2021-UNAT-1122 (para. 63), the Appeals Tribunal set out that "the very purpose of *in lieu* compensation is to place the staff member in the same position in which he or she would have been, had the Organization complied with its contractual obligations". It further held that the Tribunal "shall ordinarily give some justification and set an amount that the Tribunal considers to be an appropriate substitution for rescission or specific performance in a given and concrete situation".

8. In this regard, the Appeals Tribunal held that "the elements which can be considered are, among others",

a. "[T]he nature and the level of the post formerly occupied by the staff member (i.e., continuous, provisional, fixed-term)";

b. "[T]he remaining time on the contract"; and

c. "[C]hances of renewal".

The nature and the level of the post formerly occupied by the Applicant and the remaining time on the contract

9. The Applicant submits that "[r]emaining time on [a fixed-term contract appointment] does not control the award of damages" as the Appeals Tribunal "routinely award alternative compensation in excess of time remaining".

10. The Tribunal notes that at the time of the termination of his employment with WMO, the Applicant held a fixed-term appointment as Director of Resource Management at the D-1 level that according to his personnel action was to expire on 31 August 2019. Also, under *Laasri*, the Applicant's remaining time on his fixed-term appointment is indeed an element to be considered by the Dispute Tribunal.

The Applicant's chances of renewal

11. The Applicant submits that he has been "a career international civil servant in a core role with the WMO", and that the "likelihood of renewal of his appointment, but for the contested decision, was very high, a further justification for an award of alternative compensation at the higher level".

12. The Applicant further contends that he had "received only positive performance evaluations", and states that in Judgment No. UNDT/2021/154, the Tribunal held that "no lawful process in WMO had ascribed blame to the Applicant regarding [the early retirement and voluntary separation incentive programme, "ERP/VSP"]". The Respondent's "invitation to speculate on a hypothetical recruitment exercise requires [the Dispute Tribunal to] exercise discretion for WMO in imagined circumstances".

13. The Respondent contends that "[b]ased on the subject matter of the complaint relating to the Applicant's actions *vis-à-vis* the ERP/VSP and the unsanctioned contact with [the Audit and Oversight Committee], there was at the very minimum serious cause for concern regarding his performance as a senior team member of the Organization". Indeed, the Respondent argues that "in the Applicant's submissions to the Tribunal, he himself references such performance shortfalls and the need to adapt his work attitude in line with the guidance of the Secretary-General". Finally, the Respondent states that in 2019/2020, the Organization "underwent major institutional reform both in its services it provides to its members states but also crucially with respect to the structure of the Secretariat". Following the "issuance of Service Notes 22/2019 … and 26/2019 … the Applicant's post of Director of Resource Management was abolished as of 31 December 2019".

14. The Tribunal notes under *Laasri*, one of the elements to consider is exactly the hypothetical scenario of the Applicant's fixed-term appointment being renewed had it not been terminated.

15. By Service Note 22/2019 ("Secretariat Structure Reform") dated 28 June 2019 and 26/2019 ("Secretariat Structure") dated 6 October 2019, the WMO Secretary-General, in fact, launched a structural reform of the WMO Secretariat that resulted in the abolition of a number of Director posts in WMO, including the Applicant's former post as Director of Resource Management at the D-1 level, by 31 December 2019. In the hypothetical situation of his fixed-term appointment having not been terminated, it could therefore, at most, have been renewed until 31 December 2019.

16. Albeit the parties' agreement that the Applicant had an unblemished performance record for almost five years until the termination of his appointment on 9 May 2018, the case record also shows that at the time of the termination decision, the WMO Secretary-General was indeed very dissatisfied with the Applicant's involvement in WMO's administration of its ERP/VSP. This is explicitly demonstrated

by the WMO Secretary-General's very negative statements concerning the Applicant in the 9 May 2018 termination letter.

17. Considering these circumstances, the Tribunal finds it most unlikely that—in the hypothesis that the Applicant's fixed-term appointment had not already been terminated on 9 May 2018—it would have been renewed from 31 August (the expiry date of his fixed-term appointment) to 31 December 2019 (the last date before the abolition of his post).

18. The Respondent further submits that there were no other D-1 level Director posts to which the Applicant could have been transferred as the only one available, Director of Governance Services, "differed substantially with respect to its role to that which the Applicant had occupied".

19. The Applicant, on the other hand, notes that "the Director of Governance Services post covers areas of Human Resources, Conference Services, Language Services, Publishing Services, Finance, Procurement and Legal Services". The Applicant had "over 10 years' experience in all such areas either with WMO or EUMETSAT [assumedly, an abbreviation of the European Organisation for the Exploitation of Meteorological Satellites]", while the selected candidate "had experience only in conference and language services and WMO were recently warned by [the Joint Inspection Unit that] '[a]n organization without qualified senior officials with relevant experience to fulfil those key roles exposes itself to risk of mismanagement and loss of institutional credibility'".

20. The Tribunal finds that albeit the Applicant's skills and credentials, it would be most unlikely that he would have been transferred to the post of the Director of Governance Services. Firstly, the Applicant has not demonstrated that he had any actual right to any such transfer. Secondly, because of the WMO Secretary-General's very negative view of him in the role of Director of Resource Management, it is most unlikely that he would, nevertheless, do so.

The *in lieu* compensation amount

21. The Applicant's submissions may be summarized as follows:

a. The Applicant should be awarded "three years net base pay with an additional amount of compensation in the amount equal to the contributions (the staff member's and the Organization's) that would have been paid to the United Nations Joint Staff Pension Fund for a three year period";

b. The Appeals Tribunal (referring to *Mwamsaku* 2012-UNAT-246) has held that "the gravity of procedural error was found relevant to the quantum of alternative, 10(5)(a), compensation". The Applicant's case involves "serious procedural errors and aggravating features justifying an award of alternative compensation at this level";

c. The Applicant was "removed without notice, indemnity, investigation or opportunity to address the purported reasons for separation" and "endured due process breaches so severe as to vitiate the decision without any enquiry by [the Dispute Tribunal] into the Respondent's allegations". The Applicant's "immediate ejection from WMO was essentially an act of caprice on the part of the Secretary General", and he "has been unable to identify another example of an individual summarily dismissed without investigation or right of reply in the history of this Tribunal making the Applicant's situation truly exceptional".

d. The WMO Secretary-General's "letter dismissing the Applicant failed to accurately reflect exchanges between him and the Applicant inviting the conclusion he acted in bad faith", and throughout proceedings, the WMO Secretary-General has "continued to abuse due process engaging in clandestine communications with [the Joint Appeals Board ("JAB")] only discovered upon order of disclosure from the [the Appeal Tribunal]";

e. The WMO Secretary-General's justification for the decision has "morphed since it was taken with the Secretary General considering himself at

liberty to attack the Applicant's performance despite no negative evaluation ever having occurred, raising issues with recruitment processes not addressed in the dismissal letter, providing to [the Dispute Tribunal] minutes of meetings never advanced in the years of litigation prior and even altering his own account regarding their discussion about the Applicant's contact with the Audit Committee to latterly make the false claim, never previously advanced, that he had instructed the Applicant not to do so";

f. The WMO has "failed to provide a first instance appeal body that conformed to the requirements of their agreement to come under [the Appeals Tribunal's] jurisdiction, which resulted in an exceptionally long and expensive appeal process". The Joint Appeals Board "took eight months to conduct an inquiry so deficient that [the Appeals Tribunal] were unable to judicially review it";

g. The Appeals Tribunal found in *Mmata* 2010-UNAT-092 that "an abuse of power on the part of that Applicant's managers represented exceptional circumstances justifying an award in excess of two years". The seriousness of breaches committed in the contested decision have been found to justify such award as has been the nature of the irregularity in relation to the contested administrative decision (see *Hersh* 2013-UNAT-495). The "irrevocable ending of the Applicant's [United Nations] career for disciplinary reasons without so much as an investigation mirrors the abuse of power and serious breaches previously found to justify and award in excess of two years". Also, the "disregard shown for the Applicant's livelihood, for the grounding of a decision with such serious consequences on accurate information, for basic rule of law, all indicate the existence of exceptional circumstances";

h. The contested decision "did not result from administrative error or a misunderstanding of the rules", but from "the unchecked exercise of power by [the WMO Secretary-General] whose own dismissal letter identifies himself as

the victim of the Applicant's purported misconduct". The Applicant "is the victim of his abuse of that power";

i. The Applicant was "without work from 1 June 2018 until 31 January 2019 when he secured work at an organisation of less standing and relevance and at significantly less pay". This employment is to end on 28 February 2022 after which the Applicant is unemployed, and he "seeks damages for the loss of earnings caused by the contested decision".

j. The Applicant has further been "caused other financial loss as a result of the contested decision", in total for "an amount in excess of CHF 1,7 million". These are "monies that, but for the contested decision, the Applicant would have received in his employment with WMO" and result from "removal shortly before his pension vested at five years' continuous service". The fact that he was "not paid a termination indemnity". The "absence of education grant in his new employment and the absence of diplomatic status and related benefits in his new employment".

22. The Respondent, in essence, submits that the amount of the *in lieu* compensation should be based on criteria similar to those of *Laasri* and not amount to exemplary or punitive damages, which are not allowed under art. 10.7 of the Dispute Tribunal's Statute.

23. The Tribunal notes that under the consistent jurisprudence of the Appeals Tribunal, the very purpose of compensation, including *in lieu* compensation, is that the Applicant is to be placed in the same position he would have been in had WMO complied with its obligations (see *Laasri* and also, for instance, the seminal judgment in *Warren* 2010-UNAT-059, para. 10). As much as *in lieu* compensation is "not compensatory damages based on economic loss" (see *Eissa* 2014-UNAT-469 as affirmed in *Zachariah* 2017-UNAT-764 and *Robinson* 2020-UNAT-1040), the point of departure for the Tribunal's considerations is the actual financial impact that the

unlawful contested decision had on the Applicant's situation, also because it "shall not award exemplary of punitive damages" under art. 10.7 of its Statute.

24. In the present case, if the Applicant's fixed-term appointment had not been unlawfully terminated on 9 May 2018, it is reasonable to assume that he would have kept his job until the expiry of his fixed-term contract on 31 August 2019. This means that he would have been paid his regular salary from WMO, including all related benefits and entitlements, until then.

25. At the same time, the Applicant would not have upheld any other salaries until 31 August 2019 as those he earned from:

a. The International Centre for Migration Policy Development ("ICMPD"), totaling EUR92,451.50 for the relevant period (EUR37,104.50 for February 2019, including relocation and installation allowances, and EUR9,224.50 for the following six months from 1 March to 31 August 2019);

b. Universita di Roma: EUR200 (income received therefrom up until 31 August 2019 according to the Applicant's uncontested submission).

26. The Tribunal notes that the Appeals Tribunal has held that no duty exists to consider mitigation of losses when deciding the *in lieu* compensation amount (see *Zachariah*). In any event, in the present case, this is not relevant to consider as the basic premise for the Tribunal's findings is that the Applicant would need to be compensated as had he stayed in his job as Director of Resource Management at the D-1 level with WMO if not for the unlawful termination—henceforth, there is no loss to mitigate.

27. Consequently, the Applicant is to be awarded the full salary (net base salary plus post adjustment) he would have obtained from working with WMO from 9 May 2018 to 31 August 2019, including all relevant benefits and entitlements.

28. Regarding the latter, the Applicant requests monetary compensation for the following in the application:

Pension

29. The Applicant submits that since he "was separated five months prior to achieving five years' continuous service … his pension did not vest and he lost two thirds of the fund, equal to an amount of CHF 178,991". The Respondent makes no specific submissions thereon.

30. The Tribunal finds that with reference to *Laasri*, the Applicant is to be compensated by reinstating his pension benefits and contributions retroactively from 10 May 2018 to 31 August 2019.

Education allowance

31. The Applicant submits that his "new employment does not include an education grant entitlement" and that he "still has children in full time education". Also, the Applicant states that he provided documentation for "these recurring expenses".

32. The Respondent contends that "based on the mitigation of loss principle, there was no obligation that his children should have continued to be enrolled in private education one year after his termination".

33. The Tribunal finds that under *Laasri*, to put the Applicant in the situation as if the unlawful contested decision had never occurred, he is to be allowed to benefit from the education allowance scheme applicable at the relevant time for WMO staff. Accordingly, the Applicant's right to education allowance for those education expenses

that he actually upheld for his children during the period from 10 May 2018 to 31 August 2019 is to be restored.

Diplomatic benefits concerning "annual tax car", "fuel card", "tax free car" and "VAT [assumedly, an abbreviation of value added tax] Exemption"

34. The Applicant submits that he "enjoyed diplomatic status while working for WMO which does not apply to his current employment" and which has now "rendered him liable" for the stated expenses to a car and VAT.

35. The Respondent contends that "[t]he Applicant had an obligation to mitigate loss and if that meant that he was unable to purchase a tax free car or make use of duty-free fuel allowance then this is not something that mandates compensation".

36. Pursuant to *Laasri*, as with the educational allowance, the Applicant is to be compensated, as relevant, for the losses that he actually suffered from unrightfully losing his diplomatic status from 10 May 2018 to 31 August 2019. Appended to the application, the Applicant presents "the financial implications" of his dismissal in a chart as follows (with the relevant amounts being based on his consumption/refunds during the previous years):

a. "Annual tax car"—CHF1,640.20 in 2019, which regulated to only cover until 31 August 2019 is CHF1,093.47;

b. "Fuel card"—CHF2,524.67 in 2018 and CHF4,328 in 2019, which regulated to cover only until 31 August 2019 comes down to CHF2,885.33;

c. "Tax free car"—no implication is stated for 2018 and 2019 as a replacement is only granted every fourth year;

d. "VAT Exemption"—CHF291.67 in 2018 and CHF500 in 2019, which regulated to cover only until 31 August 2019 is CHF333.33.

Legal expenses for a private lawyer to litigate the present case before WMO's former JAB Board and the Appeals Tribunal

37. The Applicant requests the "reimbursement of legal costs incurred instructing [a private lawyer] in making submissions to [the JAB]". He notes that WMO "are responsible for ensuring its staff members have access to appropriate recourse mechanisms to counterbalance the privileges and immunities that accrue to their organization". Since WMO "staff members may not file suit in a national jurisdiction it is required of WMO to provide an appropriate alternative".

38. The Applicant submits that in his case, the Appeals Tribunal found that (a) "the WMO had failed to afford a recourse mechanism conforming to its agreement to adopt the jurisdiction of [the Appeals Tribunal]" and (b) the JAB was "so deficient that [the Appeals Tribunal was] unable to review [its] decision and [was] required to remand the matter back to that body". The "representation provided before [the JAB] was without purpose, the reason it was without purpose may be directly attributed to the WMO who failed to provide an appropriate recourse mechanism". This "failure, in the context of a summary dismissal absent any form of due process, represents an abuse of process rendering an order for costs appropriate". Accordingly, he was "forced by WMO to spend monies to contest an unlawful decision to a body incapable of a legitimate review of that decision", and "the cost of representation at time when free representation was not available to the Applicant, represents a financial loss clearly attributable to the contested decision". Instead, he was subjected to a "first stage review with no free representation option", which was "found so defective its decisions could not be reviewed" and "a meaningless procedural step imposed on the Applicant". The "costs incurred during such represent a financial loss, as the process had no relevant outcome"— alternatively, "imposing such process was an abuse of process".

39. The Applicant further contends that "the legal costs incurred prior to his case arriving at [the Dispute Tribunal] for an appropriate first instance review represent a financial loss directly attributable to the contested decision". But for the contested

decision these costs "would not have been incurred". The failure by WMO to "put in place an appropriate first instance review body, coupled with the fact that—at the time—the WMO did not provide his staff with free of charge independent legal assistance, particularly in circumstances where as an organisation they have taken a summary dismissal decision without any element of due process having been respected, represent exceptional circumstances justifying an award of compensation for this specific financial harm in excess of any other notional maximum award permitted by the Tribunal".

40. The Respondent submits that compensation for legal fees "is not applicable under the heading of moral harm". Rather, the "actions of the Applicant in selecting counsel is a personal matter of choice and one that should not readily be compensated unless there is evidence of 'manifest abuse of the appeal process', which is not the case in this instance". The "[i]nstitutional deficiencies that were brought to the attention of the Administration in [*Rolli* 2019-UNAT-952] and remedied within three months cannot and should not be considered as such an abuse of the appeals process specifically directed against the Applicant". As enunciated by the Appeals Tribunal in *Bi Bea* 2013-UNAT-370, the "basic principle applicable in international courts on the question of costs is that each party shall bear its own costs".

41. At the outset, the Tribunal notes that the Applicant in his application seeks reimbursement of expenses regarding his legal representation before the JAB and frames this as either costs or compensation under the Dispute Tribunal's Statute (arts. 10.5 or 10.6, respectively).

42. Regarding an award of costs under art. 10.6 of the Statute of the Dispute Tribunal, the Tribunal notes that legal expenses can only be reimbursed if the other party has been found to have "manifestly abused the proceedings" before the Tribunal.

The Appeals Tribunal determined in *Bi Bea* 2013-UNAT-370 that these proceedings also extends to JAB proceedings with reference to art. 2.7(a) of the Statute.

43. In the present case, the Appeals Tribunal in *Rolli* 2019-UNAT-952, however, determined that for various reasons, the JAB proceedings at WMO, before which the Applicant was represented by a private counsel, were deficient as a first instance judicial process and remanded the case to the JAB for renewed considerations. As the JAB at WMO was subsequently abolished, the case was instead transferred to the Dispute Tribunal for its current review (see Judgment No. UNDT/2021/154, paras. 17 to 19).

44. The Tribunal finds that no responsibility of the deficiencies in the JAB proceedings identified by Appeals Tribunal can be ascribed to the Respondent, who was simply partaking in the proceedings as a party and had no influence over how JAB conducted them. Accordingly, no basis exists for awarding costs against the Respondent in this regard (see also the Appeals Tribunal in *Barbato* 2021-UNAT-1150).

45. Also, the Tribunal finds that it cannot award any non-pecuniary (or so-called moral) damages for the Applicant's legal expenses under 10.5(b) of the Statute of the Dispute Tribunal. These legal expenses solely concern a possible monetary—and not a non-pecuniary—loss.

46. The question is therefore whether the Applicant's legal expenses are compensable as *in lieu* compensation under 10.5(a) or pecuniary damages in accordance with 10.5(b) of the Statute of the Dispute Tribunal. As the Tribunal's considerations regarding this issue are guided by the same basic principles, they will be determined here together.

47. The Tribunal notes that in *Kebede* 2018-UNAT-874, the Appeals Tribunal outlines the three basic prerequisites for compensation, namely, harm, illegality and nexus between the three, as follows (see para. 20):

> … It is universally accepted that compensation for harm shall be supported by three elements: the harm itself; an illegality; and a nexus between both. It is not enough to demonstrate an illegality to obtain compensation; the claimant bears the burden of proof to establish the existence of negative consequences, able to be considered damages, resulting from the illegality on a cause-effect lien. If one of these three elements is not established, compensation cannot be awarded. Our case law requires that the harm be shown to be directly caused by the administrative decision in question.

48. In the present case, it is evident that had it not been for the unlawful contested decision, the Applicant would not have filed a case before the JAB. As a direct consequence thereof, the Applicant therefore hired a private counsel because, as a WMO staff member at the given time, he did not have access to the free legal services of the Office of Staff Legal Assistance or any other similar legal assistance programs. In a case as important and sensitive as a summary dismissal, the Tribunal also accepts that he did not believe that representing himself was a viable option. When the Appeals Tribunal in *Rolli* 2019-UNAT-952 found that the proceedings before the JAB were so flawed that it remanded the case for renewed considerations, he then incurred a direct and causal financial loss as his expenses to his private counsel were therefore rendered futile. Accordingly, the Tribunal finds that the requirements of *Kebede* were all satisfied and that there is no reference in *Bi Bea* 2013-UNAT-370, as otherwise argued by the Respondent, that each party, per definition, is to bear all its own legal expenses in cases before international courts such as the Dispute Tribunal.

49. Under *Laasri* and *Warren*, the Applicant is to be placed as had the breach never occurred, and in the lack of further information from the Applicant, the Tribunal finds that USD3,000 is an appropriate amount to compensate for his legal expenses.

Compensation for reputational harm under art. 10.5(b) of the Dispute Tribunal's Statute

50. The Applicant's submission may be summarized as follows:

a. The Applicant has "provided evidence of over 130 applications for jobs in [the United Nations] and elsewhere even below his former level which have not proceeded to interview". The Applicant has provided "specific evidence of a recruitment process for [the North Atlantic Treaty Organization ("NATO")] derailed by their knowledge of outstanding litigation regarding his removal from WMO";

b. The "facts of the case, the Applicant's overnight summary dismissal from a senior position with the WMO for purported serious misconduct, clearly indicate as a matter of logic that reputational harm was caused". This reputational harm was "later compounded by his ejection from the WMO offices by security guards when he attended to retrieve some personal items following dismissal, an action taken in front of his former colleagues". A "google search of the Applicant's name returns [the Appeals Tribunal's] case detailing his summary dismissal from WMO as the second result". It is "clear from the above that the Applicant's career as an international civil servant, in particular as a senior manager, is damaged beyond repair by the reputational damage he suffered as result of his unlawful summary dismissal";

c. The day after sanction was "WMO holiday for Ascension and the Applicant did not attend the office, nor did any other staff". Accordingly, the Respondent's "submissions on treatment by security should be disregarded". No "witness is named as seeing such so the Respondent's assertion does not even reach the level of hearsay evidence", and the Applicant "cannot remember approving the payment identified". If this is "a true record he may have approved a pending payment remotely from home simply in order to clear his desk" and approval of "a payment already cleared by the Budget Controller

represents a formality". The Applicant's "account should be preferred; on 11 May, he attended the office for 15 minutes to recover personal items and was removed by security";

d. The Applicant's career will "likely never fully recover from the WMO Secretary General's unlawful decision to summarily dismiss" him. The "unique deficiencies in the manner of his treatment warrant compensation at the highest level";

e. The Applicant had "expected to take part in an oral hearing and have the opportunity to provide evidence regarding these elements of reputational harm", and in the closing statement on remedies, he requests "a hearing to allow him to do so".

51. The Respondent's submissions might be summarized as follows:

a. The Applicant highlights his "inability to obtain a position and submits a list of applications where he was not selected" and "posits that his non-selection for the post at NATO was as a direct result of his summary dismissal". No evidence, however, "directly suggest that the lack of success in obtaining employment in the desired posts, within the first eight-months, can be attributed directly to the summary dismissal". The Applicant "bears the burden of establishing that the harm caused was as a direct result of the Administration's actions" and the email chain with NATO provided by the Applicant "fails to provide such a nexus";

b. The Applicant "remained in employment since the beginning of February 2019 with the ICMPD, holding a director position in Resource Management and Operations in Vienna". That "the Applicant will not be retained by ICMPD beyond February 2022 (four years after the contested decision) should not be blamed on the Respondent". The Applicant also "fails to adduce any evidence regarding his separation from ICMPD or the associated

reasoning and what nexus, if any, this has in relation to the contested administrative decision";

c. While the Applicant was "escorted from the building by security guards", this is an incomplete version of the events. Upon being informed that the Applicant was terminated on 9 May 2018, he "remained in his office for that day and the following two days". Indeed, the Applicant was "unwilling to leave his office and was witnessed 'working' at his desk", and he "approved WMO payments without lawful authority on 10 May 2018, which subsequently had to be rejected on the internal approval mechanism, Oracle, the day after he was terminated from service". Consequently, it was "decided on 11 May 2018, two days after he had been summarily dismissed, that the Applicant would be assisted in leaving the offices by security". The Respondent "accepts that this was unpleasant but inevitable as a result of the Applicant's own actions", but "the process of escorting the Applicant from WMO premises was calm throughout and no verbal exchanges took place".

52. The Tribunal notes that in *Dieng* 2021-UNAT-1118, the Appeals Tribunal held that harm to reputation is an individual type of compensable non-pecuniary damages under art. 10.5(b) of the Dispute Tribunal's Statute.

53. As for proving reputational harm, the Appeals Tribunal stated in *Kallon* 2017-UNAT-742 that, "The harm to *dignitas* or to reputation and career potential may thus be established on the totality of the evidence; or it may consist of the applicant's own testimony or that of others, experts or otherwise, recounting the applicant's experience and the observed effects of the insult to dignity. And, as stated above, the facts may also presumptively speak for themselves to a sufficient degree that it is permissible as a matter of evidence to infer logically and legitimately from the factual matrix, including the nature of the breach, the manner of treatment and the violation of the obligation under the contract to act fairly and reasonably, that harm to personality deserving of compensation has been sufficiently proved and is thus supported by the

evidence as appropriately required by Article 10(5)(b) of the UNDT Statute. And in this regard, it should be kept in mind, a court may deem *prima facie* evidence to be conclusive, and to be sufficient to discharge the overall onus of proof, where the other party has failed to meet an evidentiary burden shifted to it during the course of trial in accordance with the rules of trial and principles of evidence" (para. 38).

54. The Appeals Tribunal further added that, "While obviously corroboration will assist the applicant in meeting his or her burden of proof, and thus ordinarily will be required, such evidence is not required in all cases. There is no basis in law, principle or policy which precludes a tribunal from relying exclusively on the testimony of a single witness, be it the applicant or another witness, to make a finding of moral harm. In accordance with universally accepted rules of evidence, the testimony of a single witness must be approached with caution but if it is credible, reliable and satisfactory in all material respects, it may well be sufficient to discharge the evidentiary burden" (see para. 69).

55. Regarding corroboratory evidence for a claim for reputational harm, in *Malhotra* 2021-UNAT-1147, the Appeals Tribunal (paras. 42 and 43) affirmed the Dispute Tribunal's judgment in *Malhotra* UNDT/2020/193 (para. 67). Therein, with reference to the applicant having unsuccessfully applied for 27 other jobs subsequent to being imposed an unlawful disciplinary sanction and administrative measure, the Dispute Tribunal further took judicial note of "the fact that it is standard practice that a job applicant for a United Nations job will need to indicate in their job application whether they have previously been subject of a workplace disciplinary process and/or investigation". If having to do so, the Dispute Tribunal found that "such stipulations will necessarily significantly devaluate a job candidature, in particular if it is a senior position requiring supervisory skills and competencies and the alleged disciplinary issue involved incidents in which the person had been found in fault thereof".

56. The Tribunal finds that it is only reasonable to assume that a prospective employer will ask an unemployed job applicant why s/he left her/his last job. If the job

applicant explains that s/he was summarily dismissed because of serious disagreements with the senior leadership, this would evidently also be a strong deterrent for this employer (in line herewith, see *Payenda* 2021-UNAT-1156, para. 41). In this regard, the Tribunal takes judicial note of the fact that in the standard job application form on the online jobsite for the United Nations Secretariat (Inspira), a job applicant is also required to indicate her/his "Reason for leaving" each and every previous job s/he lists under "Work Experience".

57. In the present case, in order to corroborate the Applicant's claim that he suffered reputational harm from the unlawful contested decision, he submits that he submitted more than 130 job applications and provides a list of 123 applications that he submitted until 23 June 2021. The Respondent does not deny this.

58. When perusing the list of jobs for which the Applicant had applied, it follows that they were mostly very senior positions in reputable international organizations, including the United Nations, or private sector companies. Also, despite the Applicant's professional experiences and qualifications, he was only called for relatively few interviews.

59. Consequently, following the Appeals Tribunal's jurisprudence in *Kebede*, *Kallon* and *Malhotra*, the Tribunal finds that the Applicant has demonstrated that he suffered reputational harm from his unlawful summary dismissal form WMO.

60. Unlike in *Malhotra*, the Applicant, nevertheless, eventually managed to secure a new job, namely the one with ICMPD (as Director for Resources and Operations Management) within less a year of being dismissed from WMO, and albeit not a United Nations job, this position was at the senior level with a renowned international organization, namely ICMPD. Also, since assuming this position, in the Applicant's new job applications and elsewhere, he has no longer had to explain that he is unemployed due to his unlawful summary dismissal from WMO. The actual reputation harm suffered by the Applicant was therefore less than in *Malhotra*.

61. Regarding the other circumstances raised by the Applicant, the Tribunal finds that if he no longer holds an employment with ICMPD, this cannot be attributed to the unlawful contested decision. As such, these are unrelated events, and the contested administrative decision goes almost four years back in time. Also, the fact that the Applicant's name is stated on a judgment from the Appeals Tribunal, which then might appear in online searches regarding his name, cannot be ascribed to the unlawful contested decision. Before the Applicant filed his application to the Appeals Tribunal, he should have known that his name would be indicated on this judgment, and he has provided no evidence of him intending to have his name redacted therefrom. Finally, the Applicant's escort out of the WMO premises a couple of days after his summary dismissal did not cause him any compensable reputational harm under art. 10.5(b) of the Tribunal of the Dispute Tribunal. This was an isolated one-time event with only a few people involved, the escort was a predictable consequence for the Applicant as he had already been summarily dismissed at that time, and he has not proven any reputational or other harm resulting therefrom.

62. The Tribunal therefore finds that the Applicant's reputational harm falls in the midrange of compensable damages, and with reference to *Malhotra* 2021-UNAT-1147 (affirming *Malhotra* UNDT/2020/193), awards him two months of net-base salary in compensation.

Two-year net base salary limit for compensation under art. 10.5 of the Dispute Tribunal's Statute

63. Under art. 10.5(b) of the Dispute Tribunal's Statute, the Tribunal may "in exceptional cases" order the payment of a compensation higher than two years' net base salary of the Applicant and "shall provide reasons for that decision".

64. The Applicant argues that the present case is exceptional and that a compensation amount beyond the two-year net base salary limit for compensation is therefore warranted as per art. 10.5 of the Dispute Tribunal's Statute.

65. The Tribunal notes that when computing the final amount of the Applicant's compensation, the sum is not likely to exceed the limit of two years' net base of the Applicant. Should the amount, however, do so, in accordance with art. 10.5 of the Dispute Tribunal's Statute, the Tribunal does not consider that the harm suffered by the Applicant in the present case is so exceptional that it justifies a compensation award higher than two years' net base salary of the Applicant.

Case management

66. The Applicant argues in his final observations that the Respondent filed "new evidence and argument absent from the Reply" in his closing submissions and that "[t]hey should be estopped from doing so as the Applicant's response is now limited to two pages".

67. The Tribunal notes that whereas new evidence and argument should ordinarily not be filed with the closing submissions, these final submissions were, in the present case, ordered by the Tribunal in its judgment on the merits, and the parties were both allowed to present them in the light of the substantive findings. Subsequent to the Respondent filing his final submissions, the Applicant also had the opportunity to respond to them and did not request additional time and/or space to do so. The Applicant's request for estoppel is therefore rejected.

Conclusion

68. In light of the foregoing, the Tribunal DECIDES that:

a. The contested decision is rescinded;

b. As *in lieu* compensation under art. 10.5(a) of the Dispute Tribunal's Statute, the Applicant shall be awarded the following:

i. Full salary, including net-base salary and post adjustment, with regular deductions from 10 May 2018 to 31 August 2019;

ii. Pension contributions to be restored retroactively from 10 May 2018 to 31 August 2019;

iii. Right to education allowances to be restored from 10 May 2018 to 31 August 2019;

iv. CHF1,093.47 in 2019 for "annual tax";

v. CHF2,524.67 in 2018 and CHF2,885.33 in 2019 for "fuel card";

vi. CHF291.67 in 2018 and CHF333.33 in 2019 for "VAT Exemption";

vii. USD3,000 for legal expenses;

c. From the *in lieu* compensation amount is to be deducted EUR92,451.50 plus EUR200 (the Applicant's actual income from salaries from 10 May 2018 until 31 August 2019);

d. The Applicant is awarded two months of net-base salary in compensation under art. 10.5(b) of the Dispute Tribunal's Statute;

e. The aggregated compensation amount is not to exceed two years' net base salary of the Applicant;

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

(Signed)
Judge Joelle Adda

Dated this 17th day of March 2022

Entered in the Register on this 17th day of March 2022

(Signed)
Nerea Suero Fontecha, Registrar, New York