



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2011/024

Judgment No.: UNDT/2011/178

Date: 18 October 2011

Original: English

Before: Judge Thomas Laker

Registry: Geneva

Registrar: Anne Coutin, Officer-in-Charge

GEHR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Ingeborg Daamen, UNOV/UNODC

Introduction

1. By an application sent on 15 May 2011, the Applicant challenges the classification decision notified to him on 15 March 2011 in relation to the post of Senior Legal Adviser. He also challenges the decision of his first reporting officer to use the terms of reference dated 15 June 2010 with a view to appraising his performance for the period from 1 April 2010 to 31 March 2011 (“2010-2011 performance appraisal”).

2. He asks the Tribunal to set aside the contested decisions and claims compensation for the violation of his due process rights and the harassment he suffered.

Facts

3. The Applicant joined the United Nations Office on Drugs and Crime (“UNODC”) in 2002 in Vienna. With effect from 1 November 2007, he was appointed under a one-year fixed-term appointment to the post of Senior Terrorism Prevention Officer, at level P-5, in the Terrorism Prevention Branch (“TPB”), within the Division of Treaty Affairs (“DTA”). His appointment was continuously extended thereafter.

4. Following a restructuring of TPB in April 2008, his functional title was changed to that of Chief of the Counter-Terrorism Legal Services Section I.

5. In the fall of 2009, the Chief of TPB and the Officer-in-Charge of DTA, respectively the Applicant’s first and second reporting officers, announced to TPB staff that the Branch was to be reorganized and, on 8 December 2009, they informed the Applicant that his post would be abolished and that he would be reassigned, at the same level, to the position of Senior Legal Adviser which was to be created within the Office of the Chief of TPB. The latter confirmed the Applicant’s reassignment in an email of 11 December 2009, stating:

Your main functions would be to develop an expanded TPB programme of work in the area of nuclear, chemical and biological

terrorism. In addition to the substantive development of such programme, including through partnerships with other organizations, you would be tasked with raising the extra-budgetary resources needed to support the programme of activities and related staff costs.

As Senior Legal Adviser, you would report to the Branch Chief and provide, as needed and requested, inputs and advice relating to all aspects of the Branch's mandate and activities.

6. Responding to a request from the Chief of TPB, the Applicant sent on 29 January 2010 a draft work plan for the position of Senior Legal Adviser.

7. By memorandum dated 11 February 2010, the Officer-in-Charge of DTA sent to the UNODC Executive Director draft terms of reference for TPB, recommending that the new structure be effective retroactively as from 1 February 2010. He further explained in the memorandum that the implementation of the new structure would be achieved "through reassignment of existing posts together with their current incumbents ... as well as by modification of the [t]erms of [r]eference and job clarifications for posts as appropriate".

8. On 12 February 2010, the Chief of TPB informed TPB staff that the Executive Director had formally approved the new structure and the next step would be the drawing up of the terms of reference for individual positions within the structure. Shortly thereafter, she sent to the Applicant draft terms of reference for the position of Senior Legal Adviser and asked for his comments and suggestions.

9. On 25 March 2010, draft generic job profiles for all professional positions within the new TPB structure were sent for approval to the Human Resources Management Service ("HRMS") of the United Nations Office at Vienna ("UNOV") and, on 3 June 2010, HRMS informed the Chief of TPB and the Officer-in-Charge of DTA that the generic job profile of Senior Programme Officer (Terrorism Prevention), at level P-5, had been classified with retroactive effect from 1 April 2010.

10. On 27 April 2010, the Applicant filed an application with the Tribunal, challenging the decisions to abolish his post and to reassign him to the position of

Senior Legal Adviser. His application was eventually rejected in Judgment *Gehr* UNDT/2011/142 dated 12 August 2011.

11. On 16 June 2010, the Chief of TPB sent to the Applicant a new version, dated 15 June 2010, of the draft terms of reference for the position of Senior Legal Adviser together with the generic job profile of Senior Programme Officer (Terrorism Prevention), and asked for his comments.

12. On 11 February 2011, the Chief of TPB sent to the Applicant his 2010-2011 performance appraisal report. In the report, she noted that the work plan, which had been established outside the electronic performance appraisal system (“e-PAS”) due to the Applicant’s continued refusal to submit an “acceptable” work plan, “reflect[ed] and codif[ied]” his terms of reference, and she invited him to a meeting with a view to discussing his performance.

13. On 15 March 2011, a classification notice for the post of Senior Legal Adviser was issued by HRMS and sent to the Applicant. The notice stated that the classification had taken effect retroactively as from 1 April 2010. The terms of reference dated 15 June 2010 as well as the generic job profile of Senior Programme Officer (Terrorism Prevention) were appended to the notice.

14. On 31 March 2011, the Applicant requested management evaluation of the classification decision of 15 March as well as the decision of his first reporting officer to use terms of reference “which [we]re different from those submitted for the purpose of classification and from those [he] had received on 12 February 2010” in order to appraise his 2010-2011 performance.

15. By letter dated 13 May 2011, the Applicant was informed that, based on a review of his request of 31 March 2011, the Secretary-General had concluded that the classification decision had been made in accordance with the relevant provisions, that it had not been tainted by improper motivations, and that the use of the terms of reference to develop the work plan for his 2010-2011 performance appraisal comported with the applicable rules.

16. On 15 May 2011, the Applicant filed with the Tribunal the application which forms the subject of the present Judgment. The Respondent filed his reply on 23 June 2011.

17. On 10 August 2011, the Respondent produced, at the request of the Tribunal, copies of the classification requests and decisions regarding the generic job profile of Senior Programme Officer (Terrorism Prevention) and the post of Senior Legal Adviser.

18. A hearing was held on 20 September 2011, to which the Applicant and Counsel for the Respondent participated by videoconference. During the hearing, two human resources assistants gave evidence.

19. Upon the Tribunal's request, the Respondent filed on 27 September additional documentation in support of his contention that UNOV had duly received a delegation of authority for the classification of posts in Vienna. The Applicant submitted further observations on 28 September 2011.

Parties' submissions

20. The Applicant's principal contentions are:

a. UNOV had no authority to classify the position of Senior Legal Adviser. In accordance with administrative instruction ST/AI/388 (Personnel arrangements for the United Nations International Drug Control Programme (UNDCP)), the Secretary-General delegated his authority only for the Fund for Drug Abuse Control. Additionally, ST/AI/388 is based on an issuance which has been abolished;

b. According to the guidelines on generic job profiles, managers are not entitled to modify generic job profiles in any way. In the present case, the Administration intended to circumvent the requirement for the Headquarters' endorsement of the generic job profiles and failed to base the classification process on previously approved generic job profiles. Instead, it "tailored" and used new generic job profiles, in breach of section 2.2 of administrative instruction ST/AI/1998/9 (System for the

classification of posts). The generic job profile for the position of Senior Legal Adviser does not reflect the generic job profile for the post of “Senior Legal Officer – P5”;

c. The decision that the classification should have retroactive effect from 1 April 2010 is tainted by procedural flaws. According to section 4.1 of ST/AI/1998/9, classification decisions shall become effective on the first day of the month following receipt of a request for classification submitted pursuant to section 2.2. This section states that requests for classification must include, *inter alia*, an up-to-date organizational chart and a complete and up-to-date job description for the post in question. In view of the fact that the TPB organizational chart was produced on 11 March 2011 only, the request for classification could not have been validly submitted before that date and the classification decision could not become effective as from 1 April 2010;

d. The Applicant’s 2010-2011 performance was not appraised on the basis of the draft terms of reference of 12 February 2010 or those of 15 June 2010, in breach of the principle of legal certainty. The decision to use terms of reference which were not used to determine the functions of the post of Senior Legal Adviser must be considered as arbitrary;

e. The Applicant has been subjected to harassment, as evidenced by his reports of misconduct and the fact that his reporting officers made some remarks which were inconsistent with the ratings they gave him in the context of his 2009-2010 performance. He further suffered harassment as a result of the contested decisions.

21. The Respondent’s principal contentions are:

a. The Office of Human Resources Management at Headquarters delegated authority to approve the classification of posts to UNOV in 1995 and the Director of the UNOV Division for Management in turn delegated such authority to the Chief of the Recruitment and Placement Section of HRMS in April 2010;

b. Because of its unique structure, UNODC has, in line with its past practice, developed locally generic job profiles in a number of areas. Also in line with its practice, these generic job profiles were complemented with specific terms of reference;

c. There was no intention to circumvent the requirement for the Headquarters' endorsement of the generic job profiles as such endorsement was unnecessary. The existing generic job profile for the post of "Senior Legal Officer – P5" was not appropriate. The Applicant was invited to provide comments on the generic job profile of Senior Programme Officer (Terrorism Prevention) but he declined to do so;

d. The classification process within UNODC constituted a collective exercise, affecting many staff members. In the first phase of the exercise, TPB asked HRMS to classify generic job profiles which could serve as a basis for all professional positions in TPB. HRMS classified the generic job profiles in accordance with the classification standards developed by the International Civil Service Commission, and classification notices were issued on 3 June 2010. This process was transparent and open, and many staff members provided their input. The classification of the generic job profiles thus finalized came into effect on 1 April 2010, that is, on the first day of the month following receipt of the request of 25 March 2010, and they formed the basis for the TPB management and staff to perform their duties under the new structure. In the second phase of the exercise, specific terms of reference were developed for each professional position in TPB. The terms of reference of 15 June 2010 did not differ in content from the terms of reference the Applicant had received on 12 February 2010. The document which he received on 11 February 2011 was his e-PAS work plan and it did not constitute a third set of his terms of reference. Further, the request for classification of 25 March 2010 included an organizational chart dated 1 February 2010. In spite of the delay which occurred in the classification process, the latter was completed for a number of staff members, including the Applicant, on 15 March 2011;

e. In his memorandum of 11 February 2010 to the Executive Director, the Officer-in-Charge of DTA recommended, “taking into account that the ... ePAS cycle [would] end ... on March 31, 2010 ... that changes in assignments be reflected where appropriate by the ... supervisors, and that the new supervisory lines for ePAS purposes take effect as of April 1, 2010”.

Issues

22. This case raises several issues. The Tribunal will first examine the authority of UNOV to classify the position of Senior Legal Adviser. It will then consider the regularity of the classification process and the implementation date of the classification decision, before turning to the issue of the basis upon which the evaluation of the Applicant’s 2010-2011 performance was made. Lastly, it will consider his allegations of harassment.

Consideration

Delegation of authority

23. The Respondent submits that UNOV received a delegation of authority for the classification of posts in Vienna by virtue of information circular UN/INF.456 of 30 May 1995.

24. Information circular UN/INF.456, which is entitled “Delegation of authority in respect of human resource management”, states:

1. ... [N]oting the provisions of administrative instruction ST/AI/234/Rev.1 of 22 March 1989, the Under-Secretary-General for Administration and Management has decided on an additional delegation of authority from United Nations Headquarters to the United Nations Office at Vienna for a period of one year effective 1 June 1995. After the twelve-month period has passed, the experience gained with the delegation of authority will be reviewed in order to decide on a possible further delegation of authority.

2. The additional responsibilities to be delegated, particularly with regard to ... classification of posts ... are contained in annex I to the present information circular.

25. Annex I to the information circular lists the “[c]lassification of posts in the Professional and higher categories at levels P-1 through P-5” among the matters for which UNOV received delegated authority.

26. While it is clear from the above documents that, with effect from 1 June 1995, UNOV received a delegation of authority to classify posts in the Professional category at levels P-1 through P-5, it is equally clear that its validity was, according to the terms of the information circular itself, limited in time until 31 May 1996.

27. In his additional filings of 27 September 2011, the Respondent concedes that there is no “distinct and singular document confirming the delegation of authority after the initial twelve-month period”. However, relying on a memorandum dated 23 September 2011 addressed by the Assistant Secretary-General for Human Resources Management to the Director of the UNOV Division of Management, he contends that there has been an “understanding” between United Nations Headquarters and UNOV to the effect that such delegation remained in force since it was first granted to UNOV. In this memorandum, the Assistant Secretary-General for Human Resources Management states :

UNOV has been exercising its delegated authority in the classification of posts in UNOV/UNODC and pertinent UN entities to which UNOV has been providing administrative support, in ... the Professional categor[y] up to and including the D-1 level as follows:

a) Pursuant to memoranda dated 3 April and 13 July 1995, and necessary training of staff, your office was granted and has since been exercising the classification authority for posts at ... the P-1 to P-5 levels ...

28. The Tribunal recalls that a delegation of authority should not be guessed at or presumed (see *Amar* UNDT/2011/040 and *Gehr* UNDT/2011/150). In addition, in *Hersh* UNDT/2011/154, the Tribunal held that “[d]elegation of authority must precede the taking of a decision and is not synonymous with retrospective rubber-stamping by the person who had the original authority”. With specific regard to the classification or reclassification of posts, in *Konneh* UNDT/2011/152 the

Tribunal quoted with approval Judgment No. 3016 (2011) of the Administrative Tribunal of the International Labour Organization, in which the latter considered (emphasis added):

The classification of posts involves the exercise of value judgments as to the nature and extent of the duties and responsibilities of the posts. Accordingly, the Tribunal will not substitute its own assessment or direct a new assessment unless certain grounds are established. Consistent precedent has it that “the Tribunal will not interfere with the decision ... *unless it was taken without authority* or shows some procedural or formal flaw or a mistake of fact or of law, or overlooks some material fact, or is an abuse of authority, or draws a clearly mistaken conclusion from the facts” ...

29. A careful reading of the memoranda dated 3 April and 13 July 1995 referred to in the memorandum of 23 September 2011 does not support the contention that the delegation of authority to classify posts in the Professional category continuously existed since 1 June 1995. To the contrary, the memorandum of 3 April 1995 from the then Assistant Secretary-General for Human Resources Management to the Director of the UNOV Administrative and Common Services Division, which predates the issuance of information circular UN/INF.456, specifies:

The additional delegation of authority will be effective as of 1 May 1995. It will remain in effect for an initial period of one year, after which we will review progress together ...

30. The Respondent asserts that the delegation of authority “has been periodically reviewed and, eventually, expanded”. However, he has not produced evidence in support of this contention.

31. It follows from the above that, at the material time, there existed no valid delegation of authority for UNOV to classify the Applicant’s post. On this ground alone, the classification process and decision are unlawful and the application must succeed.

32. Assuming *arguendo* that UNOV did have a valid delegation of authority at the material time to classify the Applicant’s post, there are further issues with the

classification process and the implementation of the classification decision as detailed below.

Classification process

33. According to section 2.2 of administrative instruction ST/AI/1998/9 (System for the classification of posts), requests for the classification or reclassification of a post shall include:

- (a) A complete and up-to-date job description for the post in question, using standardized job descriptions, where applicable;
- (b) An up-to-date organizational chart showing the placement of the post in question and of other posts that may be affected by the classification or reclassification requested;
- (c) A valid and available post number confirming the existence of a post approved at the appropriate level in the budget, unless the request is submitted for advice prior to a budget submission. When available, the Integrated Management Information System (IMIS) post number must be used.

34. In the instant case, the Administration proceeded to “classify” generic job profiles before it classified individual posts. The Respondent has failed to identify the legal basis for proceeding as it did.

35. Section 2.2 of ST/AI/1998/9 does not require that requests for the classification or reclassification of a post include systematically a generic job profile. In fact, the administrative instruction does not expressly refer to generic job profiles at all. Further, section 2.2(c) expressly refers to a “post number confirming the existence of a post approved at the appropriate level in the budget, unless the request is submitted for advice prior to a budget submission”. The wording of this provision strongly suggests that the classification procedure applies to posts as defined by the Tribunal in its case law (see *Gehr* UNDT/2011/142, in which the Tribunal defined a post as “the financial authorization given for a job to be performed”), and not to generic job profiles which, according to the definition provided on the website of the Office of Human Resources Management, are “standard job description[s] that encompass ... a large group of related jobs for which major characteristics of the job are similar in duties and responsibilities, education, work experience, technical skills, and

essential core competencies”. This website further distinguishes generic job profiles from individual job descriptions in that the former, having been approved by the Assistant Secretary-General for Human Resources Management at Headquarters, are “pre-classified” and serve as a basis for vacancy announcements whereas the latter should be submitted for each new post for classification.

36. This casts serious doubts on the lawfulness of the classification process followed by the Administration in the instant case.

Implementation of the classification decision

37. Section 4.1 of ST/AI/1998/9 provides that “[c]lassification decisions shall become effective as of the first of the month following receipt of a classification request fulfilling the conditions of section 2.2 above”.

38. In the instant case, the request for classification of the generic job profile of Senior Programme Officer (Terrorism Prevention) was made on 25 March 2010. However, it is not clear when the request for classification of the post of Senior Legal Adviser was made.

39. Among the documents produced by the Respondent on 10 August 2011, the form by which the request for classification of said post was transmitted to HRMS indicates that this request was made on 13 September 2010.

40. In view of the fact that the terms of reference appended to the request for classification of the post of Senior legal Adviser were dated 15 June 2010, it is clear in any event that the request could only have been validly submitted after that date.

41. Therefore, the classification of the post of Senior Legal Adviser could not have become effective as early as 1 April 2010.

Evaluation of the Applicant’s 2010-2011 performance

42. The Applicant challenges the “decision of [his] first reporting officer to use terms of reference ... which [we]re different from those submitted for the

purpose of classification and from those [he] had received on 12 February 2010” in order to appraise his 2010-2011 performance.

43. Article 2.1 of the Statute of the Tribunal stipulates that the latter “shall be competent to hear and pass judgement on an application filed by an individual ... against ... an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment”. It follows from this provision that the jurisdiction of the Tribunal is limited to ruling on the lawfulness of administrative decisions.

44. As to what constitutes an administrative decision, both the Appeals Tribunal and the Dispute Tribunal endorsed in several judgments (see *Tabari* 2010-UNAT-030 and *Schook* 2010-UNAT-013; see also *Planas* UNDT/2009/086, *Elasoud* UNDT/2010/111, *Larkin* UNDT/2011/028) the definition provided by the former United Nations Administrative Tribunal in Judgment No. 1157, *Andronov* (2003):

An “administrative decision” is a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order.

45. Likewise, the Appeals Tribunal affirmed in *Nwuke* 2010-UNAT-099 that, for a decision to be reviewable before the Dispute Tribunal, it ought to affect the staff member’s rights directly.

46. Preliminary decisions such as the choice of an appropriate basis for a staff member’s performance appraisal do not have direct legal effects on his/her rights. They can only be reviewed within the context of the assessment of the final decision, that is, the outcome of the staff member’s performance appraisal.

47. Therefore, the Tribunal finds that the contested decision did not constitute an administrative decision within the meaning of article 2.1 of the Statute.

48. Without prejudice to the foregoing, the Tribunal considers that the Applicant’s plea also fails on the merits.

49. The Applicant's fixed-term appointment was extended for one year from 1 February 2010 and for an additional 11 months from 1 February 2011. Administrative instruction ST/AI/2010/5 (Performance Management and Development System), which entered into force on 1 April 2010, thus applied to the Applicant's 2010-2011 performance appraisal.

50. ST/AI/2010/5 does not refer to terms of reference for the purpose of appraising a staff member's performance. Rather, it provides for the preparation of individual work plans on the basis of which staff members' performance should be assessed:

6.2 At the beginning of the performance cycle, supervisors shall meet with the staff under their direct supervision to ensure that the objectives of the work unit are understood and individual workplans are prepared. Supervisors may meet with the staff in their work unit either as a group or individually.

6.3 First reporting officers shall work with staff members they supervise on the development of the staff member's individual workplan for the performance cycle. The workplanning stage includes: (a) establishing individual performance evaluation criteria by setting goals/key results/achievements; (b) defining core competencies, managerial competencies (where applicable), and job-related competencies (where applicable); and (c) formulating a personal development plan, as follows:

(a) Workplan: each staff member, together with his or her first reporting officer, prepares a draft workplan for discussion between the staff member and the first reporting officer. Upon the discussion and an agreement with the first reporting officer, the staff member revises, if necessary, and submits the final workplan to the first reporting officer. The format of the workplan may vary depending on the functions of the staff member, but must include results-oriented elements such as goals/key results/achievements; actions to undertake to achieve each goal/key result/achievement; and measurement through a statement of success criteria, performance expectations and behavioural indicators to evaluate performance at the end of the cycle ...

(b) Competencies ... In the discussion of the workplan, the staff member and first reporting officers shall select the most relevant competencies related to the goals/key results/achievements identified for the reporting cycle and, where appropriate, managerial competencies ... Specific job-related competencies may be added where appropriate ...

51. The Tribunal notes at the outset that, after his reassignment was confirmed on 11 December 2009, the Applicant submitted at the request of the Chief of TPB, his first reporting officer, a draft work plan on 29 January 2010. The following “main outputs/activities” were enumerated in this work plan:

- Serve as TPB’s focal point for overall guidance and take the lead in the area of countering nuclear, chemical and biological terrorism ...
- Contribute to the development, pilot-test and integrate in TPB’s overall TA delivery a comprehensive legal counter-terrorism training curriculum for criminal justice officials in the area of nuclear, biological, and chemical terrorism ...
- Contribute to the development of an on-line training and follow-up Action Plan, through the establishment of a TPB on-line platform ...
- Take the lead in the area of operational partnerships, undertake joint activities and provide input for activities in the area of countering nuclear, biological and chemical terrorism ... with ... relevant organizations ...
- Set up and follow up on relevant partnership arrangements and elaborate related concept papers ...
- Maintain a roster of substantive experts and national officers in the area of biological, chemical and nuclear terrorism for provision of external expertise and participation in UNODC/TPB activities ...
- Provide legal advice on the mandate of the Branch ...
- Advise on and interpret for the Branch legal provisions, including those contained in the legal instruments for the suppression and prevention of terrorism ...
- Fund raising ...

52. The Tribunal further observes that in the performance appraisal report which was sent to the Applicant on 11 February 2011, the Chief of TPB noted that he had failed to submit an acceptable work plan. She also noted that, at different points during the performance cycle, the Applicant had been provided with instructions and guidance, referring in particular to six discussions she had had with him between March and December 2010.

53. The work plan contained in the performance appraisal report sent on 11 February 2011 included clear goals, actions to undertake to achieve each goal and

measurement through a statement of success criteria. The goals listed in the work plan are the following:

- elaborating a programme of work for UNODC/TPB in the area of chemical, biological, radiological and nuclear terrorism;
- leading the mobilization of extra-budgetary resources necessary for the implementation of the programme of work;
- initiating and maintaining partnerships in the area of countering chemical, biological and nuclear terrorism;
- contributing to the development of the TPB curriculum initiative in respect of chemical, biological, radiological and nuclear terrorism;
- providing guidance for and contributing to the delivery of TPB technical assistance;
- providing policy advice to the Chief of TPB and Director of DTA;
- performing managerial responsibilities related to the 2009-2010 performance cycle not yet completed.

54. Apart from the last item, these goals reflect the main functions described by the Chief of TPB in her email of 11 December 2009. In addition, they do not substantially differ from the “duties” listed in the draft terms of reference of 12 February 2010 or from the “responsibilities” detailed in the terms of reference of 15 June 2010. The Applicant, who was aware of the main functions of the post of Senior Legal Adviser and who was given the opportunity to prepare and discuss with his first reporting officer a draft work plan, is thus not justified in claiming that his 2010-2011 performance appraisal infringed the principle of legal certainty.

55. The work plan also listed relevant competencies relating to the goals identified as well as several managerial competencies and specific job-related competencies.

56. In view of the above, the Tribunal is of the opinion that the work plan was consistent with the requirements set out in section 6.3 of ST/AI/2010/5 and the Applicant has not demonstrated that it was otherwise tainted by arbitrariness.

Allegations of harassment

57. The Tribunal considers that the Applicant has not substantiated his contention that the irregularities in the classification process resulted from any form of harassment within the meaning of the Secretary-General's bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority), that is, "any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person".

58. The Applicant also points out, as proof of the harassment he claims to have suffered, that he reported misconduct on several occasions and that his reporting officers made some comments which were inconsistent with the ratings they gave him in the context of his 2009-2010 performance appraisal. But these allegations are not related to the contested decisions and they do not provide any support for the contention that the contested decisions aimed at or indeed had the effect of harassing the Applicant. His plea of harassment is accordingly rejected.

Compensation

59. The Applicant claims compensation for the violation of his due process rights.

60. In *Wu* 2010-UNAT-042, the Appeals Tribunal held: "[N]ot every violation of due process rights will necessarily lead to an award of compensation." In *Abboud* 2010-UNAT-100, it vacated the award of damages ordered by the Dispute Tribunal explaining that, even though the latter had found that the contested decision was tainted by a procedural flaw, this had not resulted in any economic loss for the applicant. Additionally, in *James* 2010-UNAT-009 and *Hastings* 2011-UNAT-109, the Appeals Tribunal held that compensation may not be awarded without specific evidence supporting the award.

61. In the instant case, though the Tribunal has considered that the classification decision was tainted by lack of authority, it is of the view that the Applicant did not produce evidence of the damage, if any, suffered by him as a result of this flaw. It further recalls that article 10.7 of the Statute specifies that the

Tribunal may not award punitive or exemplary damages. Therefore, the Tribunal can only reject the claim for compensation.

Conclusion

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

- a. The classification decision of 15 March 2011 in relation to the post of Senior Legal Adviser is rescinded;
- b. All other claims are rejected.

(Signed)

Judge Thomas Laker

Dated this 18th day of October 2011

Entered in the Register on this 18th day of October 2011

(Signed)

Anne Coutin, Officer-in-Charge, Geneva Registry