



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2013/051

Judgment No.: UNDT/2015/002

Date: 13 January 2015

Original: English

Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

TRAN NGUYEN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Laurence C. Fauth

Counsel for Respondent:

Tamara A. Shockley, UNICEF

Introduction

1. By application filed on 5 September 2013, the Applicant contests the decision by the United Nations International Children's Emergency Fund ("UNICEF") to refuse his return to UNICEF following his secondment to the World Meteorological Organization ("WMO"). He claims that this refusal breaches the terms of his secondment, as defined in the Inter-Organization Agreement concerning Transfer, Secondment or Loan of Staff among the Organizations applying the United Nations Common System of Salaries and Allowances ("Inter-Organization Agreement").

2. As remedies, the Applicant requests:

- a. That the decision be set aside;
- b. Reinstatement to a permanent post in UNICEF suiting his competencies and grade;
- c. Alternatively, material and moral damages in the amount of two years' net base salary.

Facts

3. The Applicant joined UNICEF in July 1987 as a Computer Programmer at the L-2 level in Geneva. Since 1 January 2000, he worked as Regional Information Technology Officer, at the P-5 level, on a permanent appointment, due to expire on 30 June 2018, namely the end of the month at which the Applicant was to reach his mandatory retirement age.

4. On 6 January 2009, the Chief, Human Resources Division ("HRD"), WMO, informed the Division of Human Resources ("DHR"), UNICEF, that the Applicant had been selected to fill the post of Chief, Information Technology Division at WMO, and requested UNICEF agreement to appointing the Applicant based on a two-year inter-organization exchange.

5. By response letter dated 16 January 2009, the Chief, Recruitment & Staffing Section, DHR, UNICEF, conveyed UNICEF agreement to release the Applicant to WMO under the Inter-Organization Agreement. The letter made it clear that UNICEF was still applying the Inter-Organization Agreement as it had not yet adopted the Inter-Organizational Mobility Accord.

6. On the same date, the Chief, Recruitment & Staffing Section, DHR, UNICEF, informed the Applicant that the arrangements for his secondment for an initial period of two years, from 1 April 2009 to 31 March 2011, had been concluded under the terms of the Inter-Organization Agreement. The letter specified that “[s]taff members on secondment or loan to other UN Agencies are required to apply for suitable vacancies at least six months prior to the expiration of their secondment or loan.”

7. On 23 February 2009, the Chief, HRD, WMO, informed the Applicant that WMO had received UNICEF official agreement to his secondment with effect from 1 April 2009, and at the same time sent him the Letter of Appointment with WMO.

8. On 21 October 2010, following queries by the Applicant, the DHR, UNICEF, advised him of the following:

a) In the event we bring you back to UNICEF – and you are unable to find a suitable post – we will give you three months[?] notice and you will separate with appropriate termination indemnity.

b) If you transfer to WMO – as per policy – retaining your permanent appointment will have to be negotiated by you with the receiving agency.

9. On 16 February 2011, after the Applicant had been serving on secondment with WMO for nearly two years, the Chief, HRD, WMO, wrote to the Human Resources Manager, Recruitment & Staffing Section, DHR, UNICEF, proposing an extension of the Applicant’s secondment for two additional years, from 1 April 2011 to 31 March 2013. The Human Resources Manager, Mobility & Staffing Section, DHR, UNICEF, accepted the extension on 8 March 2011, whilst advising

that any further prolongation of the Applicant's service with WMO should be on the basis of a transfer. The Applicant was copied on this correspondence.

10. The Applicant's secondment was accordingly extended until 31 March 2013.

11. On 15 January 2013, WMO issued a Personnel Action ("PA") to extend the Applicant's fixed-term appointment for two years, from 1 April 2013 to 31 March 2015. The Applicant signed this PA on 28 January 2013.

12. On 26 February 2013, the Applicant contacted DHR, UNICEF, inquiring about "possible opportunities [for] returning to UNICEF either in the field or at [Headquarters]".

13. On 5 March 2013, UNICEF contacted WMO requesting confirmation that effective 1 April 2013, the Applicant's status would be changed from secondment to transfer.

14. By email of 26 March 2013, DHR, UNICEF, responded to the Applicant's enquiry of 26 February 2013, noting that he had applied only to senior positions and encouraging him to look at all suitable positions in consultation with the Senior Human Resources Manager, Business Partner Operations, DHR, UNICEF; the Applicant was further advised that "the next option" was to be absorbed by WMO by transfer, effective 1 April 2013; it was also pointed out that UNICEF had requested WMO agreement to the Applicant's transfer on 5 March 2013.

15. The Applicant replied to DHR, UNICEF on 28 March 2013, confirming that he would continue looking at all suitable positions, as advised, while emphasizing, *inter alia*, that as per the Inter-Organization Agreement, a staff member on secondment was meant to "retain his or her rights of employment in the releasing organization", and seeking advice in this regard. On the same day, DHR, UNICEF, answered:

... secondment is a tripartite agreement between the Organizations concerned and the staff member. Please note that the definition of secondment also specifies that the period should normally not exceed two years, unless the two parties (in this case WMO and

UNICEF) decide to extend it for a further period, which has been already done in your case for an additional period of two years. Extensions of secondment beyond four years are usually not made, because that would similarly defeat the meaning of “secondments” which are only meant for a fixed period of time of normally two years. The ultimate decision to extend rests with the two organizations involved. There is no obligation to do so and UNICEF is generally not willing to prolong the agreement for the policy reasons set out above.

As such a staff member must either transfer or return to UNICEF. As a staff member in secondment ... you retain a general link with the organization which in practical terms ... means that return to UNICEF is not “automatic”. Staff members have to compete and get selected for posts to be able to return to their parent organization.

16. On 27 March 2013, the Head, Entitlements and Contracts Unit, WMO, informed DHR, UNICEF, that the Applicant had accepted a two-year extension of his contract with WMO. The Applicant was copied on this communication.

17. By letter dated 4 April 2013 to the Human Resources Manager, Mobility & Staffing Section, DHR, UNICEF, the Chief, HRD, WMO, confirmed that, with the agreement of all parties, the Applicant would be transferred to WMO as of 1 April 2013.

18. On 29 April 2013, the Applicant addressed a request for management evaluation of “[UNICEF] decision of 28 March 2013 contained in an e-mail ... declining [his] return to UNICEF following a period of secondment to WMO” to the Executive Director, UNICEF.

19. On 17 May 2013, in response to an email from UNICEF, dated 15 May 2013, seeking clarification as to which decision would be the subject of the appeal, the Applicant confirmed that he was challenging “[UNICEF] decision not to allow [him] to return to UNICEF following a period of secondment despite his requests to return”. He stated that he did not receive an express administrative decision but that the decision can be implied from either the email of 28 March 2013, wherein he was advised that he had to compete and be selected to a post in order to return to UNICEF, or, in the alternative, from the letter of 4 April 2013 whereby UNICEF advised of its agreement with WMO to transfer him to WMO.

20. By letter dated 11 June 2013, in response to the Applicant's request for management evaluation, the Deputy Executive Director (Management), UNICEF, upheld the contested decision.

21. The Applicant filed the present application by email on 5 September 2013 and, at the Registry's request, re-submitted it through the Tribunal's eFiling portal on 11 September 2013.

22. The Respondent filed his reply on 14 October 2013.

23. By Order No. 114 (GVA/2014) of 25 July 2014, the Tribunal requested the Respondent to produce additional documents, notably a copy of the specific agreement concluded to effect the Applicant's secondment to WMO, which he did on 31 July 2014.

24. At a case management hearing held on 7 October 2014, the Tribunal requested the Respondent to provide additional information, which was filed on 9 October 2014.

25. On 8 December 2014, the Tribunal conducted a hearing on the merits where the Applicant and the Human Resources Manager, Division of Human Resources, UNICEF, gave oral evidence.

Parties' submissions

26. The Applicant's principal contentions are:

a. His secondment was governed by the Inter-Organization Agreement and the UNICEF Human Resources Manual ("UNICEF Manual"), which provides UNICEF interpretation of the Inter-Organization Agreement. Both legal bodies gave him the right to return at the end of the secondment;

b. According to the definition of secondment given in the Inter-Organization Agreement, the concerned staff member "will retain his or her rights of employment in the releasing organization". According to the UNICEF Manual, para. 5.5.6, "[s]econdment implies a willingness to

reabsorb the staff member and ... is normally only available to staff members holding permanent appointments”;

c. The Administration conveys the impression that, as a condition of the secondment, the Applicant was obliged to apply for vacant posts at least six months prior to its expiration, but this obligation was not part of the relevant legal framework. There is no provision indicating that a staff member on secondment has such obligation, and that he or she would forfeit his return right by either failing to apply for vacant posts and/or to secure a vacant post through competition. Moreover, UNICEF did not remind him of this alleged condition after the extension of his secondment for two further years. Also, the Applicant was advised, in the letter of DHR, UNICEF, dated 16 January 2009, that UNICEF would ensure that the vacancy announcements are forwarded to the Applicant; however, it did not forward him any announcement that matched his qualifications and experience, or that he could fill on a temporary basis until a permanent post was identified. The Applicant submitted applications starting March 2012;

d. The Appeals Tribunal held in *Iskandar* 2012-UNAT-248 that the appellant retained specific return rights, and in *Skoda* 2010-UNAT-017 that in cases of secondment, staff members do not lose their service lien with their parent organization. This is along the same lines as the case-law of the International Labour Organization Administrative Tribunal (“ILOAT”) concerning secondment (ILOAT Judgments No. 2184 (2003) and 2206 (2003));

e. Should there be any remaining doubts as to whether the Applicant has a return right to UNICEF, the mere fact that UNICEF did not explicitly exclude such right from the outset should make the decision to refuse his return unlawful. Moreover, ambiguous or incomplete provisions should be interpreted in favour of the staff member, by virtue of the *contra proferentem* principle;

f. He was treated as though he were an outside applicant with absolutely no ties to UNICEF. By UNICEF erroneous interpretation, secondment is

nothing more than a termination of service without having to pay indemnities; and

g. He suffered from procedural and substantive violations as his return right was infringed, and also from non-pecuniary damage—including severe stress regarding his professional career, his security in retirement, as well as his loss of job security as he no longer holds a permanent appointment.

27. The Respondent's principal contentions are:

a. UNICEF followed the applicable procedures on secondment in accordance with the Inter-Organization Agreement (CEB/2003/HLCM/CM/7, dated 25 June 2003). This agreement provides for the rights of a staff member on secondment from UNICEF to another international organization. It defines secondment as the “movement of a staff member from one organization to another for a fixed period, normally not exceeding two years” and indicates that the seconded staff member “will retain his or her rights of employment in the releasing organization”. These rights of employment mean that at the end of his secondment, the Applicant must either return to UNICEF, and compete for a position, or transfer to the receiving agency, in this case WMO. He does neither have a lien to any post in UNICEF at the expiration of his secondment nor a guarantee to be appointed or placed against an available post at the expiration of his secondment. He must apply and be selected to a vacant post in order to return. While on secondment, the Applicant was granted access to the UNICEF recruitment system to apply to posts as an internal candidate; upon his secondment's expiry, if he does not transfer to the receiving agency or receive an appointment to a post in UNICEF, he is separated from service;

b. The Chief, Recruitment and Staffing Section, DHR, UNICEF, wrote to the Applicant on 16 January 2009:

Staff members on secondment or loan to other UN Agencies are required to apply for suitable vacancies at least six months prior to the expiration of their secondment or loan. Since your secondment has been requested for an initial period of two years, you will need

to start to consult the vacancy bulletin towards the last quarter of 2010. Upon receipt of your e-mail address, we will ensure that vacancy announcements are forwarded to you.

c. Prior to 31 March 2012, UNICEF sent out to all UNICEF and UNICEF affiliated staff members “Global Message Broadcasts” informing them weekly of available vacancies. The Applicant was in the mailing list of staff who received information on UNICEF vacancies. As of 31 March 2012, DHR, UNICEF, ceased such messages, advising its staff that it would be their responsibility to review the intranet and eRecruitment system for available vacancies. As of 1 April 2012, vacancy announcements were listed through UNICEF eRecruitment, on UNICEF intranet homepage. It was then the Applicant’s responsibility, as was the case for all UNICEF staff, to view job openings on the DHR eRecruitment website. He was given access to the UNICEF webmail, e-recruitment and intranet sites as a staff member on secondment. He applied on 25 March 2012 to a post of Senior Internal Auditor (P-5), in New York, through the eRecruitment system, for which he was not selected. The Applicant further applied to two posts, i.e., Director, Change Management (D-1) on 23 November 2012, and Deputy Director, Information Technology Solutions and Services Division (D-1) on 1 February 2013, and he was treated as an internal candidate. He was not selected for these posts;

d. In support of his contention that he has return rights to UNICEF, the Applicant cites *Iskandar*. However, this is a different case, as Iskandar had accepted the conditions of a reimbursable loan agreement and did not terminate his loan; therefore, he retained his rights with the releasing organization and could not contract with the receiving one. The Applicant did retain rights as a UNICEF staff member on secondment until the expiration of his secondment on 31 March 2013. He accepted a fixed-term appointment with WMO, effective after the expiration of the secondment with UNICEF. The ILOAT case-law relied upon by the Applicant is based on a different policy, not on the Inter-Organization Agreement;

e. The Inter-Organization Agreement does not provide for a right of return for the seconded staff member to a specific post upon expiration of the secondment. The Applicant was not selected to any UNICEF post upon expiration of his secondment. He accepted the offer of a fixed-term appointment and was transferred to WMO;

f. At the time the Applicant contacted UNICEF inquiring about possible opportunities to return to UNICEF (on 26 February and 20 March 2013), he had signed the PA to remain at WMO until 31 March 2015. Furthermore, after an enquiry initiated by DHR, UNICEF, the Head, Entitlements and Contracts Unit, WMO, informed UNICEF that the Applicant had been offered and accepted a two-year extension of his contract with WMO, and that a letter of transfer as of 1 April 2013 would be prepared. Hence, at the time the Applicant filed an appeal against UNICEF for violating the terms of his secondment, he had already accepted a fixed-term appointment effective after the expiration of his secondment. According to *Gabaldon* 2011-UNAT-120, said PA entailed a legal obligation of employment between the Applicant and WMO; and

g. In view of this, it is frivolous to request damages for breach of a right that the Applicant had relinquished when he signed the PA on 28 January 2013.

Consideration

Scope of the application

28. The Appeals Tribunal held in *Massabni* 2012-UNAT-238 that:

2. The duties of a Judge prior to taking a decision include the adequate interpretation and comprehension of the applications submitted by the parties, whatever their names, words, structure or content they assign to them, as the judgment must necessarily refer to the scope of the parties' contentions. Otherwise, the decision-maker would not be able to follow the correct process to accomplish his or her task, making up his or her mind and elaborating on a judgment motivated in reasons of fact and law related to the parties' submissions.

3. Thus, the authority to render a judgment gives the Judge an inherent power to individualize and define the administrative decision impugned by a party and identify what is in fact being contested and so, subject to judicial review which could lead to grant or not to grant the requested judgment.

29. The Applicant describes the impugned decision as a breach of the terms of his secondment, specifically, by refusing his return to UNICEF at its expiry. While not rejecting outright the Applicant's return, UNICEF made it conditional on him applying and being competitively selected for a vacant position. Therefore, the contested decision is the refusal of the Applicant's return to UNICEF service when his secondment ended, unless he succeeded in being competitively selected for a post in UNICEF.

30. However, the Applicant does not contest the non-extension of his secondment; the decision not to further prolong an already lengthy secondment (four years instead of the usual two) was not only clear but also accepted by all those involved, including the Applicant. Nor does the Applicant take issue with UNICEF instruction that, should he wish to return, he ought to apply for available positions at least six months prior to the end of his secondment. This requirement was expressed from the outset of the secondment arrangements—as early as January 2009—and, as a matter of fact, the Applicant did apply for a number of posts in UNICEF; however, the arrangement did not specify that failure by the Applicant to secure a post could preclude his return.

31. Lastly, the Applicant's eventual transfer from UNICEF to WMO in itself is not challenged either. Therefore, the Tribunal does not have to examine if the consent of all three parties—in particular, the Applicant's—was properly sought and obtained before effecting the transfer.

The nature of the secondment

32. Para. 2(d) of the Inter-Organization Agreement defines “secondment” as:

The movement of a staff member from one organization to another for a fixed period, normally not exceeding two years, during which he will normally be paid by and, except as otherwise provided thereafter, be subject to the staff regulations and rules of the

receiving organization, but will retain his rights of employment in the releasing organization. The period of secondment may be extended for a further fixed period by agreement among all the parties concerned.

33. A secondment does not necessarily entail a lien to a given post. Sec. 9.6 of UNICEF Executive Directive CF/EXD/2009-008 (Staff Selection Policy) of 3 November 2009, in force at the time of the Applicant's secondment, clearly states this and reads:

Staff members do not maintain a lien on a specific post. When a staff member was selected for and appointed to a vacant post, the staff member will encumber that post without any right of return to the previous post. This includes appointments where the staff member previously served in another category of staff.

34. Sec. 9.6 of UNICEF Executive Directive CF/EXD/2013-004, promulgated on 12 March 2013 to supersede the former, reiterates the above in identical terms.

35. Moreover, although UNICEF Executive Directive CF/EXD/2009-008 allowed for "detail assignments and inter-agency loans and secondments [to be] excluded from [the above-quoted] provision", the agreement formalizing the Applicant's secondment did not provide for such a derogation in his case. Hence, the Applicant could claim no right to a specific post within UNICEF.

36. However, a seconded employee remains a staff member of the releasing organization. The Appeals Tribunal confirmed in *Skoda* 2010-UNAT-017 that "in cases of secondment, staff members do not lose their service lien with their parent organization". In fact, para. 9 of the Inter-Organization Agreement specifies that:

When a staff member is seconded to another organization his contractual relationship with the releasing organization will, except as may be otherwise provided hereafter, be suspended until the expiry of the agreed period of secondment, or until such earlier date as the parties may agree.

37. What is more, a seconded staff member "will retain his rights of employment in the releasing organization", as the above-cited para. 2(d) of the Inter-Organization Agreement clearly stipulates.

38. In sum, it is the characteristic feature of a secondment that—contrary to what is the case for an inter-organization transfer—the “service lien” or the “contractual relationship” between the seconded staff member and the releasing organization remains, and said staff member retains a right to employment in the releasing organization at the end of his/her secondment. This must not be confused with an entitlement to a lien on a specific post, which—unlike for an inter-organization loan of staff—is not intrinsic to a secondment.

Rights of employment

39. In claiming that the Applicant’s “rights of employment” as a seconded staff member were respected, the Respondent stresses that the Applicant was granted treatment reserved to internal candidates regarding his applications for UNICEF advertised positions.

40. In this regard, the Respondent submitted that UNICEF consistent practice is to afford priority consideration in recruitment to staff members serving with UNICEF. This may well be so. However, despite the Tribunal’s specific request for additional information on this matter, the Respondent did not provide it with any solid legal basis backing this purported practice—other than a reference to “giving full regard to internal applicants” in sec. 2.6(e) of CF/EXD/2009-008, nor could the Tribunal identify any concrete advantage given to internal candidates in relation to external ones.

41. In any event, a certain priority or advantage in the selection procedure is not sufficient to meet the obligations incumbent on the releasing organization towards a seconded staff member at the end of a secondment.

42. It is the Tribunal’s view that the plain meaning of the term “rights of employment” generally indicates that the seconded staff member will be reabsorbed, and it does not suggest that it entails further conditions like that of the staff member having to secure a vacant position at his/her releasing organization.

43. Also, para. 5.5.6. of the UNICEF Manual states that “[s]econdment implies a willingness to *reabsorb the staff member* and it is normally only available to

staff members holding permanent appointments” (emphasis added). By this provision, the Applicant, who held a permanent appointment, had a high expectation to be “reabsorbed”. Further, it is in line with the very protective regime of permanent appointments that such an appointment will be terminated only as a last resort and subject to constraining conditions (cf. staff rule 9.6 read in conjunction with staff rule 13.1).

44. Furthermore, the Tribunal notes that other international administrative tribunals share this interpretation of rights to employment in relation to secondment. ILOAT concluded: “[a]s a general rule, the effect of secondment is to suspend the contractual relationship between the releasing agency and the employee, who retains the right to return to the releasing agency upon expiry of the secondment term without having to seek other employment” (ILOAT Judgment No. 2184 (2003)).

45. The reabsorption of a seconded staff member at the end of the secondment period not only fits the plain meaning of the relevant provisions; it is also the logical corollary of the existence of a contractual relationship that remains in force between the releasing organization as employer and the seconded staff member as employee. Having found that such relationship continues to exist, though suspended for the duration of the secondment, and since the essence of any employer-employee relationship is precisely that the staff member has the right and the obligation to work at the service of the employing organization, it appears only natural that a staff member resume service with his/her releasing organization at the end of the temporary suspension of said contractual relationship, namely at the expiration of the secondment period.

46. The foregoing may be inferred *a contrario* from para. 8(a) of the Inter-Organization Agreement, which, regarding inter-organization transfers, provides:

A staff member who is transferred will cease as from the date of transfer to have any contractual relationship with the releasing organization, which will therefore be under no obligation to re-employ him should he leave the receiving organization.

47. At any rate, even if the term “rights of employment” were not to be interpreted as an entitlement to mandatory reabsorption, it entails, at the very least, not less than what is due to a staff member holding a permanent appointment in case his post is abolished (under staff regulation 9.3), that is, the Organization must make good faith efforts to identify a post for the staff member. It results from the facts of the case that UNICEF made no attempt to find a position for the Applicant, but in fact placed that burden entirely on him.

48. In sum, making the return of a seconded staff member dependent on his/her success in competing for a vacancy comes down to treating him virtually as a non-staff member, since he has to undergo the same selection procedure and has no more guaranteed rights than any external postulant; this is so even if the seconded staff member might enjoy a limited preference or advantage. As such, this course of action effectively renders the secondment nugatory. To this extent, it violates the applicable terms of employment, and particularly the Inter-Organization Agreement, which governed the specific secondment agreement of the Applicant.

49. All of the above is without prejudice to the powers generally conferred on the Organization to deal with situations where no functions can be identified for a given staff member, which include the possibility of terminating the staff member’s contract in the interest of the Organization. This possibility, indeed, is also part of the terms of employment of any staff member, as staff rule 9.6 reads:

Reasons for termination

(c) The Secretary-General may, giving the reasons therefor, terminate the appointment of a staff member ... in accordance with the terms of the appointment or on any of the following grounds:

...

(vi) In the interest of the good administration of the Organization and in accordance with the standards of the Charter, provided that the action is not contested by the staff member concerned.

Signature of PA by the Applicant

50. Besides the above illegal action by UNICEF, the Tribunal takes note that, as the Applicant kept requesting UNICEF to find a post for him to return, he had already signed, on 28 February 2013, a two-year renewal of his appointment with WMO. Knowing, as he did, that no further extension of his secondment was possible, his acceptance of a new appointment with WMO could understandably be construed as an implicit consent to his transfer to WMO.

51. The Tribunal finds no merit in the Applicant's explanation that he signed the PA extending his appointment with WMO in the belief that it would not alter his contractual situation, and that it was merely WMO in-house administrative workflow. The terms of the PA and their importance were and are clear enough for the Applicant, a senior official who had spent some 22 years with the United Nations and four years with WMO.

52. However, the Applicant's action does not affect the illegality of the contested decision, all the more since UNICEF was not aware of such signing at the material time, thus, it had no influence on its decision-making.

*Remedies*Rescission of the impugned decision

53. The Tribunal is of the view that the breach vitiating the decision is of such nature as to warrant its rescission, as requested, and that there is no need to set an amount of compensation that the Administration may elect to pay as an alternative to rescission, pursuant to art. 10.5(b) of its Statute.

54. For the purposes of art. 10.5(b) of the Tribunal's Statute, the present application does not concern "appointment, promotion or termination". Although the chain of events lead to ending the Applicant's permanent appointment with UNICEF, this was not the direct consequence of the contested decision, i.e., conditioning the Applicant's return to UNICEF service after the expiry of his secondment to his competitive selection for a vacancy. Rather, it derived from his transfer to WMO. In this respect, it should be recalled that compensation in lieu of

rescission, as per art. 10.5(b) of the Statute, constitutes an exception to the rule and exceptions, as a matter of principle, must be interpreted narrowly and strictly (see *Kasmani* 2010-UNAT-011).

Material damage

55. The Applicant sustained no loss of emoluments. As a result of his transfer to WMO, he continued working, without any break, in an organization applying the same salary scale, and he remained employed at the same grade and step. Furthermore, the Applicant maintained all his benefits and entitlements.

56. As for the indemnities and/or allowances that he might have received following the end of his permanent appointment with UNICEF, staff rule 4.17(c) prescribes on re-employment that:

When a staff member receives a new appointment in the United Nations common system of salaries and allowances less than 12 months after separation, the amount of any payment on account of termination indemnity, repatriation grant or commutation of accrued annual leave shall be adjusted so that the number of months, weeks or days of salary to be paid at the time of the separation after the new appointment, when added to the number of months, weeks or days paid for prior periods of service, does not exceed the total of months, weeks or days that would have been paid had the service been continuous.

57. It follows that, since the Applicant was immediately employed by WMO, thus receiving an appointment in the United Nations common system of salaries and allowances, any termination indemnity or other entitlements would have been adjusted in such a manner that he would effectively have received no additional payment. As a consequence, he did not suffer any material loss on this account either.

58. The Applicant, who used to hold a permanent appointment with UNICEF, had a two-year fixed-term appointment with WMO, which carries an inherent risk of not being renewed. Yet, by virtue of his fixed-term appointment, he was expected to be employed by WMO until 31 March 2015, i.e., two years after the contested decision. Trying to determine the chances that the Applicant's

appointment be not renewed after this date would be highly speculative. Therefore, no material damage can be derived from this perspective.

59. In any case, the Tribunal was informed that the Applicant has since then changed employer, functions and grade, as he was selected to a D-1 position with the Office of the United Nations High Commissioner for Refugees. Given these circumstances, even in the event that the Applicant came to lose his employment in the future, including due to a non-renewal, there could be no causal link with the contested decision.

Moral damage

60. The Applicant submits that UNICEF decision caused him non-pecuniary damage, including severe stress regarding his professional career and his security in retirement, as well as a loss of job security for he no longer holds a permanent appointment.

61. Indeed, it is an undisputable fact that the Applicant ended up having a more precarious contractual status. He went from a permanent contract, the most secure kind of contract that the United Nations offered, to an appointment limited in time and with no expectancy of renewal. This represents a considerable loss of job security, which no doubt had a detrimental impact on his situation and his well-being to some extent. The Applicant gave indeed evidence at the hearing regarding the stress he suffered for this motive. Accordingly, the Tribunal has decided to award compensation for moral damages in the amount of USD2,000.

Conclusion

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

- a. The contested decision, having been found unlawful, is rescinded;
- b. The Applicant is to be paid USD2,000 for moral damage; and
- c. All other pleas are dismissed.

(Signed)

Judge Thomas Laker

Dated this 13th day of January 2015

Entered in the Register on this 13th day of January 2015

(Signed)

René M. Vargas M., Registrar, Geneva