



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 Lucchi 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 2021-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

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 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-level Director posts to which the Applicant could have been transferred and 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

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 Mwamsakwe 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 "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 the Dispute Tribunal minutes of meetings never advanced in the years of litigation prior and even altering his own account

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. 40 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 on the Applicant's situation, also because it shall not award exemplary or 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 salary until 31 August 2019 as those he earned from

a. The International Centre for Migration Policy Development ("ICMPD"), totaling EUR9,245.50 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. Università di Roma EUR200 (income received therefrom until 31 August 2019 according to the Applicant's uncontested submission).

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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 is 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 arrears 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. "costs incurred during such represent a financial loss for the Applicant. (3)(hi)-2c 0uy i dec th fi4 (n)-1d (um)-7 (e)4 (s)-

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 applicable under the heading of moral harm. Rather the “actions of the Applicant 59. (a)4 (I)-2 7/ation

The Appeals Tribunal determined in *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 *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 consideration. 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 *Barb* 2011-UNAT-1150).

45. Also, the Tribunal finds that it cannot award any nonpecuniary (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 nonpecuniary—loss.

46. The question is therefore whether the Applicant's legal expenses are compensable as in *lie* 84 0 Td (ecu)-3 Tw 6.0.004 Tcn (t)-2 (he (b))3.1 Tw 6.

Case No. UNDT/NY2021/019

Judgment No. UNDT/2022/025

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, all 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". "clear from the above that the Applicant's career as an international 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 submission 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

evidence as appropriately ~~repe~~ 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 ~~es~~entiary burden shifted to it during the course of trial in accordance with the rules of trial and principles of evidence ~~(par~~ a. 38)

54. The Appeals Tribunal further added that ~~the~~ 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 discharg ~~(, pr)3 (i)-s0f (oa)4 (c)4 06 (a)6 (p)(~~

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 Payent 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 his “Reason for leaving” each and every previous job site 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 that the

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, 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 stopped from doing so as the Applicant's response is now limited to two pages".

67. The Tribunal notes that the Respondent's evidence and argument should ordinarily be limited to two pages.

- i. Full salary including net base salary and post

(Signed)