

Case No.:

## Introduction

1. By application dated 25 September 2009 and corrected on 14 October 2009, the Applicant contests the Secretary-General's decision of 29 June 2009 to pay him an indemnity equal to two months net base salary only, for the material and moral damages suffered as the result of the unlawfulness of the decision not to extend his appointment after its expiration date.

2. The Applicant requests the Tribunal, in addition, to order that he be given priority consideration for a post at level P-5.

## Facts

3. The Applicant entered the service of the United Nations International Independent Investigation Commission ("UNIIC") on 21 April 2007, at level P-5, on an appointment of limited duration expiring on 20 October 2007 governed by the 300 series of the Staff Rules.

4. With effect from 1 June 2007, UNIIC decided to implement the electronic Performance Appraisal System ("e-PAS").

5. By memorandum dated 29 August 2007, the Applicant's supervisor recommended that his appointment not be extended beyond its expiration date of 20 October 2007 on the grounds that he fell below the level required in three "core competencies": "professionalism", "team work" and "respect for

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Personnel Section. She explained that, at the time when the Applicant had entered the service of UNIIIC, staff members were appraised using the Field Operations Performance Appraisal form and that, for staff members hired for a term of less than six months, a Special Performance Evaluation Report was used. She also stated that the decision had been taken not to use e-PAS for the Applicant's appraisal in the light of the recommendation made in August 2007 not to renew

13. In early December 2007, the Applicant was informed that his appointment would not be extended after its expiration date, and he ceased working for UNIIC on 20 December 2007.

14. On 10 January 2008, the Applicant requested a review of the decision not to renew his appointment and on 7 April 2008 he submitted an appeal against that decision to the Joint Appeals Board (“JAB”).

15. In its report dated 3 June 2009, the JAB concluded, by majority, that the process of performance evaluation of the Applicant had been improperly conducted, since his supervisor had not taken into account the report of the rebuttal panel when she drew up the mid-point review on 25 November 2007. It also considered that the Applicant had not been afforded the possibility to improve his performance between the time when his mid-point review was drawn up and the time when he was informed that his contract would not be renewed, while nonetheless pointing out that, by refusing to sign off his mid-point review, he had foreclosed any opportunity to rebut his performance appraisal. Consequently, the panel recommended to the Secretary-General that the Applicant be given priority consideration for a post at level P-5. It further recommended that he be awarded 18 months net salary as compensation for the breaches of due process it had found. One member of the JAB, however, expressed his disagreement with the conclusions of the majority. For that member, “the [applicant] signed off on the work plan of his e-pa

18. The Respondent submitted his reply on 18 November 2009 and the Applicant filed observations on the Respondent's reply on 22 November 2009. The Respondent submitted his comments on 9 December 2009.

19. By letter of 12 December 2009, the Applicant expressed the wish to be heard by the Tribunal. On 16 November 2010, a hearing was held at which the Applicant and Counsel for the Respondent were present. At that hearing, the Tribunal asked the Applicant to produce a report detailing his earnings since the ending of his appointment, and the Applicant filed the requested document on 22 November 2010.

Parties' contentions

place, though it was she who was responsible for ensuring compliance with the procedure;

d. The conduct of his supervisor and the Head of UNIIC was discriminatory.

21. The Respondent's contentions are:

a. Only the decision served on the Applicant on 29 June 2009 may be contested before the Tribunal under the transitional measures set forth in the Secretary-General's bulletin ST/SGB/2009/11, which provides that "[d]ecisions made by the Secretary-General between 2 April 2009 and 30 June 2009 on appeals ... may be challenged before the Tribunal";

b. The Secretary-General was not bound to follow the recommendation of the JAB;

c. The Secretary-General's decision was a lawful and reasonable exercise of his discretionary power and the Applicant has not shown either that it was motivated by prejudice or any other unlawful consideration, or that it was arbitrary;

d. The Secretary-General's decision was taken after the procedures had been followed and all the circumstances taken into consideration;

e. The Applicant produced no evidence to the JAB of the damage he claimed to have suffered, in particular with regard to his professional reputation, and the JAB therefore made no findings on that issue. The claim for damages in the Application must therefore be considered as a new claim, which must consequently be rejected.

## Judgment

22. Given the nature of the activities of UNIIC and the duties the Applicant was performing at the date on which he was informed that his appointment would

23. The Applicant contests the decision of the Secretary-General to pay him an indemnity limited to two months net base salary as compensation for the damage he had suffered as a result of the unlawfulness of the decision not to extend his appointment beyond its expiration date. He also requests the Tribunal to order the Administration to give him priority consideration for a post at level P-5.

24. As to this latter claim, the Statute of this Tribun







supervisor, his chances of having his appointment renewed beyond 20 April 2008

the date this Judgment becomes executable until payment of the said compensation;

3) All the other claims are rejected.

\_\_\_\_\_ ( ) \_\_\_\_\_

Judge Jean-François Cousin

Dated this 6<sup>th</sup> day of December 2010

Entered in the Register on this 6<sup>th</sup> day of December 2010

\_\_\_\_\_ ( ) \_\_\_\_\_

Víctor Rodríguez, Registrar, UNDT, Geneva