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6. The appeal is dismissed.

Facts and Procedure

7. Mr. Sprauten served with the United Nations Office for Project Services (UNOPS) in 1988 at the L-4 level until his separation in 2009. In January 2006, it was announced that as a result of the decision to relocate the UNOPS headquarters from New York to Copenhagen, Mr. Sprauten's post at the L-4 level as a Port

Portfolio Manager; and three months' net base salary as compensation for the stress that Mr. Sprauten had experienced related to his loss of chance/opportunity.

Submissions

Secretary-General's Appeal

12. The Secretary-General only appeals the Judgment on compensation, not the Judgment on merits. In particular, the Secretary-General appeals the award of six months' net base salary for the irregularities in the selection process. The Secretary-General does not challenge the UNDT's award of three months' net base salary for stress experienced by Mr. Sprauten.

13. The Secretary-General recalls that not every violation of due process rights will necessarily lead to an award of compensation. Rather, any compensation for loss of chance must be warranted and proportionate to the harm suffered as the purpose of compensation is to place the staff member in the same position he or she would have been in had the Organization complied with its contractual obligations.

14. The Secretary-General submits that when a staff member has lost a chance of being appointed, rather than promoted, to a post at the same level, the anticipated loss is more difficult to assess. The Secretary-General recalls that in *Kasyanov*, the Appeals Tribunal held that Mr. Kasyanov could not be awarded compensation for financial losses that he did not actually incur. The Appeals Tribunal, however, confirmed that a staff member who has not been properly considered for a lateral move has suffered damage for which he was entitled to be compensated and ruled that the award of two months' net base salary was appropriate in his case.

15. The Secretary-General submits that the UNDT erred in law and exceeded its competence by failing to sufficiently set out the reasons underlying its award of six months' net base salary to Mr. Sprauten. The Secretary-General submits that there was no basis for the UNDT to depart from the Appeals Tribunal's jurisprudence in *Kasyanov*, which bears substantially similar facts to the present case. The Secretary-General requests that the Appeals Tribunal, in accordance with its jurisprudence in *Kasyanov*, reduce the UNDT's award of six months' net base salary to two months' net base salary in favour of Mr. Sprauten.

Mr. Sprauten's Answer

16. Mr. Sprauten submits that the Secretary-General has failed to articulate valid grounds for reducing the UNDT's monetary award. Mr. Sprauten claims that the Secretary-General's appeal is frivolous and delays the full implementation of the UNDT Judgment.

17. The reliance by the Secretary-General on the reasoning in *Kasyanov* is misplaced since *Kasyanov* dealt with a mere procedural irregularity in a promotion exercise, which did not affect the outcome.

18. Mr. Sprauten requests that, as a result of the Secretary-General's abuse of process, this Tribunal award him interest from 6 May 2010, when the UNDT issued the Judgment on merits, and USD 20,000 in costs.

Considerations

19. The Secretary-General only appeals the Judgment on compensation, in particular the award of six months' net base salary for the irregularities in the selection process. The Secretary-General's main contentions are that the amount of compensation awarded by the UNDT is inconsistent with the Appeals Tribunal's judgment in *Kasyanov*; and that the UNDT erred in law and exceeded its competence by failing to sufficiently state the reasons underlying this award.

20. Mr. Sprauten submits that the reliance by the Secretary-General on the reasoning in *Kasyanov* is misplaced since *Kasyanov* dealt with a mere irregularity in a promotion exercise, which did not affect the outcome. Mr. Sprauten seeks damages for the loss of opportunity as the subject P-4 post was fixed-term and continuing in nature and, as from July 2004 until his separation in February 2009, he served on a series of short-term and temporary appointments.

21. The Appeals Tribunal recalls that Mr. Kasyanov, a Russian interpreter at the P-4 level, was wrongly denied a lateral transfer as a 15-day candidate because preference had been given to a 30-day candidate. While the Appeals Tribunal confirmed the Dispute Tribunal's award of compensation for non-pecuniary damages arising from the violation of his rights during the selection process, it reduced the compensation to the amount of two

months' net base salary. The Judgment in *Kasyanov* followed the Appeals Tribunal's holding in *Wu*,⁴ which was decided on similar facts.

22. The Appeals Tribunal affirmed in *Lutta* that there is no set way for a trial court to set damages for loss of chance of promotion and that each case must turn on its facts. Having regard to the facts, we find substantial differences between the present case and *Kasyanov*. Had Mr. Kasyanov been selected, it would have been a mere lateral move for him without any change in salary and status. On the other hand, Mr. Sprauten's selection would have been a move from a temporary appointment to a fixed-term appointment. His situation was more aggravated as the post he was occupying was abolished. Accordingly, Mr. Sprauten's loss of opportunity was more severe as it resulted in a loss of job security.

23. Finally, the Appeals Tribunal rejects the Secretary-General's contention that the UNDT erred in law and exceeded its competence by failing to sufficiently state the reasons underlying its award of six months' net base salary. The UNDT thoroughly examined the governing principles in awarding damages and followed the jurisprudence of the Appeals Tribunal in *Lutta*. The Appeals Tribunal gives deference to the UNDT in the exercise of its discretion and will not disturb the quantum of damages.

Judgment

24. The appeal is dismissed. The UNDT Judgment is affirmed.

⁴ *Wu v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-042.

Original and Authoritative Version: English

Dated this 16th day of March 2012 in New York, United States.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Garewal

(Signed)

Judge Faherty

Entered in the Register on this 7th day of May 2012 in New York, United States.

(Signed)

Weicheng Lin, Registrar