

**Before**

**Justice**

**Registry:**

Geneva

**Registrar:**

Anne Coulter

SECRETARY  
OF THE UNITED STATES

## **Introduction**

1. In the substantive Judgment in this matter *Rees* UNDT/2011/156, the Tribunal decided that the Respondent did not comply with its performance appraisal obligations to the Applicant; that the decision in June 2009 to reassign the Applicant from her position as Coordinator of the Women’s Rights and Gender Unit (“WRGU”), Office of the High Commissioner for Human Rights (“OHCHR”), in Geneva, to another post was an unlawful exercise of the discretion conferred by former staff regulation 1.2(c) and former staff rule 101.2(b) and should be rescinded; that the non-extension of the Applicant’s contract in March 2010 was not a valid exercise of the Administration’s discretionary powers and should be rescinded; and that the Applicant was not constructively dismissed.

2. Both parties requested the Tribunal to determine remedies as a separate consideration.

3. The parties were encouraged to seek mutual resolution of these issues. This proved unsuccessful.

## **Motion to file supplementary submissions**

4. The Applicant filed submissions on relief, to which the Respondent replied on 14 October 2011. On 22 October the Respondent filed a motion for leave to file “Respondent’s Supplement to Response to Applicant’s Submission on Relief”. By Order No. 194 (GVA/2011) this motion was rejected.

## **Facts**

5. The reasoning for the decision and the facts of the case were stated in the judgment on liability.

## **Remedies sought**

6. The Applicant seeks:

a. Two years' gross salary at the P-5 level and appropriate step, from the date of the non-extension of the Applicant's appointment (31 March 2010), including post adjustment, dependency allowance, education grant, "home leave grant", "mobility/hardship/non-removal allowance", "pension remuneration (i.e. the Organi[z]ation's 15.8% pension contribution)", "difference in payment of health insurance", the foregoing reduced by the staff assessment and the Applicant's own pension contribution;

b. Interest at the US Prime Rate applicable at 31 March 2010 (date of the non-renewal decision) to the date of payment of any compensation awarded by the Tribunal, with an additional 5 per cent should the judgment on compensation not be executed within 60 days;

c. Damages for a combination of moral injury, loss of professional reputation and career prospects, and public humiliation in the sum of USD100,000;

d. Two months' net base salary for failure to comply with the performance review obligations as required by ST/AI/2002/3;

e. The Applicant's United Nations Official Status File ("OSF") to be cleared of any adverse material relating to this matter, including any notes for file or memos concerning her performance or reasons for non-renewal of her appointment, save for this judgment and subsequent action taken to implement it;

f. That all public statements by officials of the Organization concerning the Applicant's case be ordered to stop.

**Parties' submissions on remedies**

7.

f. The Tribunal found that the Applicant was unnecessarily and publicly humiliated by top management of OHCHR. Public acts of humiliation were repeated, occurred in high-profile settings and were noticed by the attendants. This conduct caused the Applicant reputation harm. In addition, at that time the Applicant was already in a vulnerable position professionally and personally, and was not able to defend herself;

g. This case is exceptional and warrants compensation beyond the statutory limit of two years' net base salary. There was an accumulation of aggravating factors<sup>1</sup>, including the "egregious public conduct" of OHCHR senior management, the Applicant's deprivation of due process rights through disregard of PAS obligations, and the decision to reassign her unlawfully without proper consultation. Furthermore, the fact that the Applicant needed support from a staff representative and stress counselling shows her exceptional emotional hardship;

h. The Applicant had a legitimate expectation that her fixed-term contract would be renewed until she reached at least the age for early retirement. Renewal of her appointment would have allowed her to seek employment outside the Organization without frustration of a decrease in salary and benefits and with an increase in the number of years of contribution for her pension;

i. Public comments to the media by spokespersons for the Secretary-General and the High Commissioner for Human Rights concerning this case have caused her unnecessary stress and anxiety.

9. The Respondent's principal contentions are:

a. The decisions in question did not cause any economic loss to the Applicant. She did not prove any causal link between the two contested decisions and the moral harm she claimed to have suffered. Moreover, "these damages could not have been caused, in the presence of a finding that the

Respondent had not engaged in any course of conduct that amounted to ‘marching the Applicant to the door’”. Loss of employment and flawed procedural decisions are not to be confused;

b. In the absence of proof of ill-will towards the Applicant, “distress additional to that arising from the mere fact of the wrongful decision ... cannot be a factor in the calculation of compensation”<sup>2</sup> in cases of procedurally flawed decisions. Cases cited by the Applicant concerned misconduct charges strategically employed to harass or march the staff member to the door. The Applicant’s separation “did not result from breach of contract” and the Respondent made good faith efforts to place her on a position of equal pay and encouraged her to apply for alternative positions, which she did not;

c. The Respondent’s attempts to keep the Applicant within the Organization in another role “effectively break the link between questions about the Applicant’s performance as Head of WRGU and her departure”. OHCHR management identified a post for the Applicant and made several attempts to get her to apply to alternative positions, and she refused;

d.

accept the proposed P-5 position and did not apply to any other position despite aid and reminders by the Administration;

f. The Applicant did not suffer any period of employment hiatus. She found a new job before the expiration of her appointment. The decision to depart from the Organization was the Applicant's choice; she should not be entitled to compensation for this choice;

g. Awarding compensation in this case would run against the principle that irregularities that do not create any economic loss do not give rise to compensation;<sup>4</sup>

h. The Applicant is requesting a much higher amount as compensation than the Tribunal has awarded even in cases when the applicant had in no manner contributed to the degradation of the situation;

i. The Applicant overstates her own stress and anxiety. She herself made "intemperate allegations"—as characterized by the Tribunal—which in fact poisoned the working relationship and may help to explain her refusal to accept the lateral transfer and to apply for other positions in the United Nations. This calls into question the Applicant's request for compensation based on the alleged permanently damaged prospects of reemployment with the Organization as a result of the non-renewal of her contract;

j. It is necessary for the Applicant to prove that any moral harm or loss of reputation suffered is the direct result of the unlawful decision impugned. In this regard, first, there is no evidence of loss of reputation suffered by the Applicant (her reputation seemingly was even enhanced among the OHCHR





the procedural breaches identified in the substantive judgment and the period of that renewal.

16. The Applicant's previous appointments with OHCHR had been consistently renewed from 1998 to 2008. Her last two renewals as Head of WRGU were each for two years. The work of the WRGU continued upon the departure of the Applicant. While there is normally no expectancy of renewal of a fixed-term contract, the Tribunal finds that but for the events including the procedural breaches which led to the non-renewal of her contract, there is a strong probability that the Applicant would have received a further renewal for two years. Proper performance management would have given the parties the opportunity to solve their differences at an early stage and to maintain a sustainable working relationship. She therefore could have reasonably expected two years' further salary and entitlements.

17. In order to place the Applicant in the position that she would have been but for the breach of her terms of appointment, as far as it is reasonably possible, she is awarded two years' net base salary at the P-5 level and step which she had at the date of the non-extension of her appointment on 31 March 2010, plus the applicable post adjustment and the value of any quantifiable monetary entitlements and benefits to which she would have been entitled. In addition, she is entitled to the amount corresponding to the contributions that the Organization would have made to the United Nations Joint Staff Pension Fund ("UNJSPF") and to a sum which represents the difference between what she would have paid in medical insurance at the United Nations and the medical insurance she actually had to pay since 31 March 2010 during the two years following her separation. The resulting sum is to be reduced by the net take-home pay which the Applicant has received and will receive in the period of two years following her separation from OHCHR, that is, up to 31 March 2012. The Applicant is responsible for providing all documents necessary to justify her entitlements and full details of her earnings from 31 March to the Respondent by 31 March 2012.



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Statute, the Tribunal finds that the aggravating features of this case include the period of time over which the Applicant was subjected to negative comments and behaviours, the unexpected reassignment and last minute removal from the mission to Colombia. These factors satisfy the Tribunal that there are exceptional circumstances to warrant a total award to the Applicant of more than two years' compensation.

*Interest*

27. The final calculation of the sums to be paid to the Applicant cannot be concluded until the expiry of the two-year period from her separation, in order to take into account her earnings to 1 April 2012. Therefore interest will not begin to be applied until 1 April 2012.

**Conclusion**

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

a. The Tribunal recalls its decision in *Rees* UNDT/2011/156 regarding the rescission of the contested decisions. If the Respondent elects to pay compensation as an alternative to the rescission of the non-renewal of her appointment, the Applicant is awarded two years' net base salary at the P-5 level and step which she had on 31 March 2010, plus the entitlements listed in paragraph 17 above, the foregoing reduced by the net take-home pay which the Applicant has received and will receive in the period of two years following her separation from OHCHR, that is, up to 31 March 2012;

b. The compensation set in sub-paragraph (a) shall bear interest at the United States Prime Rate from 1 April 2012;

c. By 31 March 2012, the Applicant will provide the Respondent with full details of the net take-home pay which she received between 31 March 2010 and 31 March 2012 and all necessary documentation to support her claims to the entitlements listed in paragraph 17;

- d. The Applicant is awarded four months' net base salary for moral damages;
- e. The compensation set in sub-paragraph (d) shall bear interest at the