



## Introduction

1. This is a judgment on the relief to which the Applicant is entitled following the issuance of Judgment No. UNDT/2015/126 on 31 December 2015.

2. On 28 March 2013, the Applicant, former Chief Procurement Officer of the United Nations, filed two separate applications before the Tribunal. The applications concerned decisions by the Assistant Secretary-General, Office of Central Support Services (OCSS), which delegated authority to perform significant functions in the management of financial, human and physical resources (referred to

3. The first application, registered under Case No. UNDT/NY/2013/018, contested the decision dated 4 October 2012 and notified to the Applicant on 5 October 2012 to deny him the required designation to take up the post of CPO at the United Nations Interim Security Force for Abyei (UNISFA).

4. The second application, registered under Case No. UNDT/NY/2013/019, contested the decision dated 28 November 2012 and notified to the Applicant on 5 December 2012 to remove his designation as CPO/NUSTAH.

5. The cases were subject to an order for combined proceedings on 18 June 2014.

6. In the judgment on liability the Tribunal found that the contested decisions were flawed and that the Applicant is entitled to be compensated. The Tribunal then stated:



Case No

decision was taken in April 2014 to correct the breach of his due process rights,

which rendered 54 TJ ET BT 1 0 0 1 511.3 681.82 Tm 5-71.82 Tm [(br)3(e)4ic Tm [( )] TJ

administrative decision contested in the proceedings. In these cases, the contested decisions have already been implemented.

**Preliminary issue: motion for interim measures pending proceedings**

19. In the interests of judicial economy and in light of the findings herein, the

measures pending proceedings as part of the present judgment on remedy.

20.

2. At any time during the proceedings, the Dispute Tribunal may order an interim measure, which is without appeal, to provide temporary relief to either party, where the contested administrative decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination.

21. Procedure states:

**Article 14 Suspension of action during the proceedings**

1. At any time during the proceedings, the Dispute Tribunal may order interim measures to provide temporary relief where the contested administrative decision appears prima facie to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination.

22. The above provisions provide the Tribunal with the authority to grant interim measures to provide temporary relief pending the ultimate judicial determination of the merits of a case, and where relevant, appropriate remedy. In the present cases, the issue of liability has been settled in the first instance by the judgment on liability, issued on 31 December 2015. The issue of remedy is dealt with in this judgment. Specific performance is the remedy the



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UNDT/NY/2013/019

Judgment No. UNDT/2013/027



28. The Respondent submits that specific performance is not possible as the

after the judicial procedure had begun, rendering the latter unnecessary, as the  
stated:

17. This does not mean that the eventual past existence of the illegality deprives the staff member of her claim concerning harassment, damages and compensation, which is the matter of the other case she filed before the UNDT (Case No. UNDT/NY/2012/063).

18. Indeed, such issues, including the initial decision to hold in abeyance the fact-finding panel and the grievances Ms. Masykanova asserts in respect of alleged unfair treatment, relate to Case No. UNDT/NY/2012/063, rather than the instant case, which was limited to the decision not to constitute the fact-finding panel and which was, inevitably, rendered moot by the constitution of said panel. Ultimately, once the investigation has been concluded, its outcome and administrative consequences, as well as any related acts or omissions, can be challenged in their own right via management evaluation and before the Dispute and Appeals Tribunals

the hearing  
attempts to cure or remedy a breach of due process by initiating, in  
2014, more than a year after the contested decisions and long after the

process for the Applicant to respond to [the Headquarters Committee  
on Contracts] Note are not properly part of the cases before the  
Tribunal and will not be considered.

82.

which it is exercised. On the other hand, the contested decisions having been rescinded, the Applicant may in the future receive designation.

34. In addition, the Applicant requests that, save for the judgment on liability, the Tribunal order that all negative materials relating to the contested decisions including but not limited to the extension of contract letter dated 10 June 2013 be removed from this file.

the contested decisions. The interoffice memorandum from Mr. GS dated 10 June 2013 i

38. This judgment and the judgment on liability are also to be placed on the

*Compensation*

39. In *Warren* 2010-UNAT-059, purpose of compensation is to place the staff member in the same position he or she

(para. 10 recently affirmed in *Applicant* 2015-UNAT-590 at para. 61)

40. The Dispute Tribunal





the Acting Head, Office of Human Resources Management, dated 1 October 2014, the Applicant was informed that he would not be granted a continuing appointment during the relevant annual review period because he did not receive a performance rating equivalent in his four most recent performance appraisal reports. The Applicant states that the relevant performance rating was that given in his 2012/2013 performance appraisal, which was briefly referred to in the judgment on liability (paras. 3940).



procurement, in the circumstances of these cases, these consequences are more appropriately dealt with under the head of pecuniary loss caused by damage to his professional reputation.

53. The Applicant also submits that the contested decisions left him vulnerable to separation from service, and that he had to mitigate his losses by accepting a record shows that on 20 March 2015, the Applicant signed an undated interoffice memorandum from the Chief Human Resources Officer, MINUSTAH, indicating that he accepted an offer to serve as an Administrative Officer at the P3 level in a Joint Logistics Operations Center in Les Cayes. The memorandum stated that the assignment was for an initial period of one year. On

two and a half years after the contested decisions. Although the Tribunal takes into

prejudice to his cases before the Tribunal, and in order to mitigate his losses, the developments in his career in 2015 and 2016 are simply too remote from the contested decisions to justify an award of compensation for pecuniary loss.

#### Non-pecuniary damages

56. The Applicant submits that compensation is warranted for the negative effects of the contested decisions on his professional reputation as well as for the stress he has been subjected to over a prolonged period.

57. In *Asariotis* 2013-UNAT-309, the Appeals Tribunal held:

36. To invoke its jurisdiction to award moral damages, the UNDT must in the first instance identify the moral injury sustained by the employee. This identification can never be an exact science and such identification will necessarily depend on the facts of each case. What can be stated, by way of general principle, is that damages for a moral injury may arise:

(i)

37.

been blamed for issues that were institutional in nature, some of which even preceded his arrival at MINUSTAH.

61. The Appeals Tribunal has stated that the Dispute Tribunal is best placed to conclude from the evidence, records, or otherwise, whether or not a claim for moral damages is established *Andersson 2013*.



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damage suffered by the individual. Each case is assessed on its own facts including the manner in which the individual has been treated and the impact of the treatment on that specific individual. Factual circumstances will differ from case to case and the Tribunal will carry out, as far as it is possible to do so, a notional benchmarking of various awards in order to determine the level appropriate in a particular case.

68. The facts in these cases are egregious. In the judgment on liability the







the Tribunal noted that it had raised a number of issues in its judgment that warranted appropriate attention by the Respondent with respect to the existing

