

UNITED NATIONS DISPUTE TRIBUNAL

## **Introduction**

1.

The indefinite appointment may be terminated by the High Commissioner in accordance with the relevant provisions of the Staff Regulations and Staff Rules, in which case you shall be given a three-month period of notice. Should your appointment be terminated, you will receive such indemnity as may be provided for under the Staff Regulations and the Staff Rules. There is no entitlement to either a period of notice or an indemnity payment in the event of dismissal for misconduct pursuant to Chapter X of the Staff Rules.

5. On 11 January 2016, the Director of LONY sent a letter to the Applicant which stated:

As a result of a comprehensive review of the LONY structure, discontinue the position you currently encumber, 10008112, Snr.

There is a six month notification period, and you will be formally notified once Headquarters makes the final decision. There will be newly created positions for which you are encouraged to apply and further details will be provided as they are finalized.

6. On 29 January 2016, the Director of LONY sent a letter to the Applicant informing her that her post would be abolished on 1 August 2016. The letter noted:

[T]he Office will seek confirmation from the Assignment Committee whether a comparative review process will be required from now on and to contact [human resources personnel]. She will be glad to explain the various options that may be available to you.

7. On 19 February 2016, the Applicant sent a letter to the Department of Human Resources requesting suspension of the abolishment as she and her husband as non-U.S. citizens would be forced to leave the U.S.

8. In an annex to her application, the Applicant provided a table setting forth 18 UNHCR job vacancies to which she applied between April and September 2016. The positions to which she applied were at the FS-5, G-5, P-2, P-3 and P-4 levels and located in numerous duty stations throughout Africa, the Middle East, North America, Europe and Asia. According to the Applicant, the Administration did not inform her of the status of 17 of the 18 applications.

9. On 12 August 2016, the Applicant was informed that she was one of two final candidates under consideration for the GS-5 Senior Admin/Finance Assistant in the LONY office of UNHCR. Thereafter, the Applicant learned that her former colleague holding a fixed-

light of the abolition of her position and in the absence of suitable positions, the second option would be served on Special Leave with Full Pay.

12. On 25 September 2016, the Applicant informed DHRM that she selected termination on 31 December 2016.

13. On 10 November 2016, the Applicant submitted a request for management evaluation.

14. On 8 December 2016, the Deputy High Commissioner decided to uphold the contested decision to separate the Applicant from service.

15. On 17 January 2017, the Applicant filed the present application.

16. On 18 January 2017, the Registry transmitted the application to the Respondent, instructing him to file his reply by 17 February 2017.

17. On 18 January 2017, the case was assigned to the undersigned Judge.

18. On 8 February 2017, the Respondent filed his reply.

19.

e. a list of all temporary positions in the GS category *in the field* from 26 January 2016 to the present;

21.

s follows:

[8] UNHCR has 470 field offices in 128 countries and thousands of positions in the General Service category at the GS-7 level and below. Therefore, it would be excessively difficult for the Respondent to comply with these two paragraphs.

[9] In any event, pursuant to staff rule 4.4(a), staff members belonging to the General Service category must be recruited locally. Unless they have legal status in a particular duty station, they cannot be offered positions in the General Service category. Consequently, the availability of posts in the General Service category in the field is not relevant to the facts of this case.

22. The Respondent further indicated that pursuant to staff rule 4.4(a), staff members belonging to the General Service category must be recruited locally and that he considered the requested information for the General Service category in the field

the field is not relevant

With regard to para. 7(h) of Order No. 43 (NY/2017), which requested the Respondent to produce documents relating to

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In the UNDT case *El-Kholy* [UNDT/2016/102], the Tribunal stated that in case of abolition of post or reduction of staff, the Organization may be expected to review all possible suitable available posts which are vacant or likely to be vacant in the near future. Such posts can be filled by way

Staff Rule 9.6(e) and the relevant [Dispute Tribunal] jurisprudence do not make any mention of grade levels, only that the Administration is obliged to make a good faith effort to find a suitable alternative post. As such, she could have been placed in these posts. The Tribunal clearly stated the same in *El-Kholy* and *Nakhlawi*.

has argued that because [the Applicant] was not the only staff member with an indefinite appointment whose position had been abolished, placing her on either of these two posts without a competitive process would

[The Applicant] wholly rejects this argument. Regarding the post of Senior Finance and Administrative Assistant, the Respondent proffered evidence that the successful candidate for this post was the holder of a fixed-term appointment. This is a violation of Staff Rule 9.6(e) which necessitates that staff on indefinite appointments who are affected by post abolition be retained on a priority basis as compared with fixed-term staff. Prior to having a competitive process for this post, the Administration should have just selected [the Applicant].

Regarding the post of Senior External Relations Assistant, the Respondent evidenced that [the Applicant] and another indefinite appointment holder competed against each other for this post. [The Applicant] argues that this was unnecessary: UNHCR should have placed either her or her colleague in this post and found another suitable post for the remaining staff member.

The Respondent also averred that because [the Applicant] and the other staff member failed the written assessment and interview for this post, it was appropriate to then re-advertise the post externally. [The Applicant] argues that this is totally incorrect. If UNHCR mistakenly assumed that there needed to be a competitive process between the two indefinite appointment holders, then at least it should have selected the most successful candidate as either would have been suitable.

The Respondent has also evidenced that after the successful candidate for the Senior External Relations Assistant post refused to take it up, it has remained vacant. [The Applicant] argues that UNHCR could have easily met obligations towards her at any time by

well. In fact, [the Applicant] gave evidence that she applied for 15 such posts but was not selected. [The Applicant] has evidenced that there were dozens of vacancies in the professional categories that UNHCR had the discretion to place [the Applicant] in. However, UNHCR apparently never even considered this option.

### sions

29. (emphasis in the original and footnotes omitted):

UNHCR fully complied with its obligations under Staff Rules 9.6(e) and (f) as well as with its *Comparative Review Policy for Locally Recruited Staff Members*. The Applicant failed to establish that the contested decision was unlawful, unfair or otherwise flawed. Consequently, the Respondent respectfully requests that this Application be dismissed.

*Comparative Review Policy for Locally Recruited Staff Members*, any vacant post that was not at the G-7 level and in the same functional group as the meaning of Staff Rule 9.6(e) of the Staff Rules.

Moreover, pursuant to Staff Rule 9.6(f), any vacant post that entirely irrelevant.

Similarly, according to Staff Rule 9.6(g), any vacant post that is outside UNHCR is also entirely irrelevant.

*presumption that official acts have been regularly performed. This is called the presumption of regularity*

*the applicable Regulations and Rules have [not] been applied in a fair, transparent and non-discriminatory manner*

*necessarily has power to restructure some or all of its departments or units, including the abolition of posts, the creation of new posts and the redeployment of staff*

Staff Rule 9.6(e). This provision requires the Organization to examine *the availability of suitable posts in which their services can be effectively utilized, provided that due regard shall be given in all cases to relative competence, integrity and length of service*

It is noteworthy that the Staff Rules and Regulations do not  
*suitable posts*

*suitable post*

Some organizations, including the United Nations Secretariat and the United Nations Development Programme chose not to specify or define this term. Other UN entities, including UNHCR, decided to promulgate a separate policy for the sole purposes of interpreting and applying Staff Rule 9.6(e).

*The first step of the interpretation of any kind of rules, worldwide, consists of paying attention to the literal terms of the norm. When the language used in the respective disposition is plain, common and causes no comprehension problems, the text of the rule must be interpreted upon its own reading, without further investigation. Otherwise, the intent of the statute or regulation under consideration would be ignored under the pretext of consulting its spirit. If the text is not specifically inconsistent with other rules set out in the same context or higher norms in hierarchy, it must be respected, whatever technical opinion the interpreter may have to the contrary, or else the interpreter would become the author.*



Also in June 2016, the Applicant applied for Senior External Relations Assistant at the G-5 level in the New York Office. The Applicant did not pass the written test or the interview. Although she was notified of the decision not to select her for this post, she chose not to contest this decision by way of management evaluation request.

Therefore, the decisions not to select her for the two G-5 posts cannot be reviewed by this Tribunal because they are time-barred and have not been subject to management evaluation requests. Reviewing the decisions not to select the Applicant for the G-5 posts of Senior External Relations Assistant and Senior Finance/Administrative

assertion, the documentary evidence filed by the Respondent establishes without any doubt that UNHCR made extraordinary efforts to recommend the Applicant to other UN agencies.

The Respondent also allowed the Applicant to remain in service and to dedicate a significant amount a0 0 1 1351 Tmr7BT1 0 i6(t)] TJ GB2t18.71 TT1 0 ic

(iv) If the conduct of the staff member indicates that the staff member does not meet the highest standards of integrity required by Article 101, paragraph 3, of the Charter;

(v) If facts anterior to the appointment of the staff member and relevant to his or her suitability come to light that, if they had been known at the time of his or her appointment, should, under the standards established in the Charter, have precluded his or her appointment;

(vi) In the interest of the good administration of the Organization and in accordance with the standards of the Charter, provided that the action is not contested by the staff member concerned;

(b) In addition, in the case of a staff member holding a continuing appointment, the Secretary-General may terminate the appointment without the consent of the staff member if, in the opinion of the Secretary-General, such action would be in the interest of the good administration of the Organization, to be interpreted principally as a change or termination of a mandate, and in accordance with the standards of the Charter;

(c) If the Secretary-General terminates an appointment, the staff member shall be given such notice and such indemnity payment as may be applicable under the Staff Regulations and Staff Rules. Payments of termination indemnity shall be made by the Secretary-General in accordance with the rates and conditions specified in annex III to the present Regulations;

(d) The Secretary-General may, where the circumstances warrant and he or she considers it justified, pay to a staff member whose appointment has been terminated, provided that the termination is not contested, a termination indemnity payment not more than 50 per cent higher than that which would otherwise be payable under the Staff Regulations.

31. Staff rules 9.6 and 9.7 state, in relevant parts, regarding termination:

**Rule 9.6**

**Termination**

**Definitions**

(a) A termination within the meaning of the Staff Regulations and Staff Rules is a separation from service initiated by the Secretary-General.



### **Reasons for termination**

(c) The Secretary-General may, giving the reasons therefor, terminate the appointment of a staff member who holds a temporary, fixed-term or continuing appointment in accordance with the terms of the appointment or on any of the following grounds:

- (i) Abolition of posts or reduction of staff;

### **Termination for abolition of posts and reduction of staff**

(e) Except as otherwise expressly provided in paragraph (f) below and staff rule 13.1, if the necessities of service require that appointments of staff members be terminated as a result of the abolition of a post or the reduction of staff, and subject to the availability of suitable posts in which their services can be effectively utilized, provided that due regard shall be given in all cases to relative competence, integrity and length of service, staff members shall be retained in the following order of preference:

- (i) Staff members holding continuing appointments;
- (ii) Staff members recruited through competitive examinations for a career appointment serving on a two-year fixed-term appointment;
- (iii) Staff members holding fixed-term appointments.

(f) The provisions of paragraph (e) above insofar as they relate to staff members in the General Service and related categories shall be deemed to have been satisfied if such staff members have received consideration for suitable posts available within their parent organization at their duty stations.

### **Rule 9.7**

#### **Notice of termination**

(b) A staff member whose fixed-term appointment is to be of such termination or such written notice as may otherwise be stipulated in his or her letter of appointment.

32. Staff rule 13.2 states:

**Rule 13.2**

**Indefinite appointment**

(a) A staff member holding an indefinite appointment as at 30 June 2009 shall retain the appointment until he or she separates from the Organization. Effective 1 July 2009, the staff

and conditions applicable to continuing appointments under the Staff Regulations and the Staff Rules, except as provided under the present rule.

(b) Staff members holding an indefinite appointment may

(c)

country, both the relevant Director and the Director of DHRM: may approve one joint comparative review to be conducted for all relevant positions in the country.

**Comparative Review Principles**

4. Prior to undertaking a comparative review, the concerned office should verify that there are no staff members on temporary appointments or affiliate workforce undertaking similar functions to those of the discontinued position(s) and whose contract discontinuation would mitigate the need for a comparative review.

6. All staff, appointed to the posts determined to be suitable posts and holding indefinite or fixed-

### **Role of the Assignments Committee**

9. The Assignments Committee (AC) responsible for the duty station where the comparative review is to take place shall undertake the comparative review.

11. The AC shall:

a) review data provided by the administration on the basis of which the list of staff members who fall within the scope of the comparative review has been established; and/or, confirm that, as determined by the Administration, no suitable positions are available for conducting a comparative review;

b) assess all cases of staff who remain unplaced after the most recent posting session and consider all options for their placement in accordance with the present policy;

c) proceed in accordance with the criteria set out above in conducting its review. The AC shall endeavor to agree on the ranking by consensus. Where no consensus can be achieved, the majority of votes shall decide, and in the event of a tie, the Chairperson would have a casting vote;

d) neither solicit nor accept the submission of recommendations from management or any source outside the established AC, whether before or during the AC deliberations. The AC may request facts from sources outside the AC to help it making an informed decision, but not opinions; and

e) submit its report to the Deputy High Commissioner (for posts at Headquarters in Gen7 Tm[( )n-TJET3306.05 396.19 Tm[(ns)4(.)] TJ11 Tg-3(r)10(t)-2(e)-3(rs)3( )-4(t)

f) List of discontinued posts and the effective date of discontinuation.

Termination

13. For posts outside Geneva, following the receipt of the AC's report by

instances of the abolition of posts, and the reduction of staff or to implement a restructuring by the General Assembly.

35. From the Convention on Termination of Employment, 1982 (No. 158) follows, in relevant parts:

*Article 2*

1. This Convention applies to all branches of economic activity and to all employed persons.
2. A Member may exclude the following categories of employed persons from all or some of the provisions of this Convention:
  - (a) workers engaged under a contract of employment for a specified period of time or a specified task;
  - (b) workers serving a period of probation or a qualifying period of employment, determined in advance and of reasonable duration;
  - (c) workers engaged on a casual basis for a short period.
3. Adequate safeguards shall be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from this Convention.
4. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof categories of employed persons whose terms and conditions of employment are governed by special arrangements which as a whole provide protection that is at least equivalent to the protection afforded under the Convention.
5. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof other limited categories of employed persons in respect of which special problems of a substantial nature arise in the light of the particular conditions of

Article 22 of the Constitution of the International Labour Organisation any categories which may have been excluded in pursuance of paragraphs 4 and 5 of this Article, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice regarding the categories excluded, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories.

***Article 3***

For the purpose of this Convention the terms ***termination*** and ***termination of employment*** mean termination of employment at the initiative of the employer.

***Article 4***

The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.

[ ]

***Article 6***

1. Temporary absence from work because of illness or injury shall not constitute a valid reason for termination.

2. The definition of what constitutes temporary absence from work, the extent to which medical certification shall be required and possible limitations to the application of paragraph 1 of this Article shall be determined in accordance with the methods of implementation referred to in Article 1 of this Convention.

[ ]

of any terminations on the workers concerned such as finding alternative employment.

2. The applicability of paragraph 1 of this Article may be limited by the methods of implementation referred to in Article 1 of this Convention to cases in which the number of workers whose termination of employment is contemplated is at least a specified number or percentage of the workforce.

3. For the purposes of this Article the term the workers representatives concerned means the workers representatives recognised as such by national law or practice, in conformity with the Workers Representatives Convention, 1971.

[ ]

#### *Receivability framework*

36. As established by the United Nations Appeals Tribunal, the Dispute Tribunal is competent to review *ex officio* its own competence or jurisdiction *ratione personae*, *ratione materiae*, and *ratione temporis* (*Pellet* 2010-UNAT-073, *QøPgkm* 2011-UNAT-182, *Gehr* 2013-UNAT-313 and *Christensen* 2013-UNAT-335). This competence can be exercised even if the parties do not raise the issue, because it constitutes a matter of law and the Statute of the Dispute Tribunal prevents it from considering cases that are not receivable.

37.

between the receivability requirements as follows:

a. The application is receivable *ratione personae* if it is filed by a current or a former staff member of the United Nations, including the United Nations Secretariat or separately administered funds (arts. 3.1(a) (b) and 8.1(b) of the Statute) or by any person making claims in the name of an incapacitated or deceased staff member of the



b. The application is receivable *ratione materiae* if the applicant is ministrative decision that is alleged to be in non-compliance

the Statute) and if the applicant previously submitted the contested administrative decision for management evaluation, where required (art. 8.1(c) of the Statute);

c. The application is receivable *ratione temporis* if it was filed before the Tribunal within the deadlines established in art. 8.1(d)(i) (iv) of the Statute and arts. 7.1 7.3 of the Rules of Procedure.

38. It results that, in order to be considered receivable by the Tribunal, an application must fulfil all the mandatory and cumulative requirements mentioned above.

*Receivability ratione personae*

39. The Applicant is a former staff member holding an indefinite appointment and therefore the application is receivable *ratione personae*.

*Receivability ratione materiae*

40. The Applicant is challenging the 16 September 2016 decision taken by the after it decid resulting in her separation (termination) from the UNCHR, which is an administrative decision(s) subject to a management evaluation request. The Applicant filed a management evaluation request before the MEU on 10 November 2016 within 60 days from the date of notification 16 September 2016 and therefore the application is receivable *ratione materiae*.



- b. death of the staff member (staff rule 9.1(vi));
- c. retirement (staff regulation 9.2 and staff rules 9.1(iv) and 9.5).

e expiration of the contract (staff regulation 9.3(a)(vi) and staff rule 9.6(c)(vi))

46. According with the general principle of legal symmetry *mutuus consensus*, *mutuus disensus* the labor contract, which is a consensual contract, can be terminated by agreement between the parties.

47. All types of appointments (temporary, fixed-term or continuing/indefinite) can be terminated in the interest of the good administration of the Organization and in accordance with the standards of the Charter provided that this action is not contested by the staff member.

48. A

- b. Abandonment of the post (staff rule 9.3).

Separation initiated by the Secretary-General

51. There are five sub-categories in the types of separation which may be initiated by the Secretary-General:

- a. Termination for reasons (grounds) not re328.99 582) not re328.99 582) fial



(b) A termination without the consent of the staff member;

(c) A direct result of the Secretary-opinion that the termination is in the interest of the good administration of the Organization; the Secretary-authority to determine the interest of good administration of the Organization and his discretionary power to terminate a Regulations and Staff Rules.

d. This termination is to be interpreted principally as a change or termination of a mandate.

e. The written notice is three months.

52. Staff regulation 9.3(b) and staff rule 9.6(d) are applicable when the Secretary- f member in cases other than the ones mentioned expressly in staff regulation 9.3(a) and staff rule 9.6(c) respectively when the General Assembly decides not to extend the mandate of a mission or there are no funds available. According to the text, this reason itself can be interpreted in two ways, either, a change of the mandate or a termination of the mandate. No ambiguity about this reason for termination is possible since the plain reading of the rule is clear in this sense and this reason cannot be assimilated or compared with any other because it is related directly to the extension of the United Nations mandate and/or the availability of funds.

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53. The Tribunal notes that in the present case the appointment was terminated for the abolishment of her post and will further analyze if the termination decision was issued in accordance with the mandatory legal







60. Furthermore a staff member holding a continuing/indefinite appointment has the highest level of legal protection from being terminated. S/he has the right to be retained either in any suitable positions vacant at the date of abolition or reduction of staff, or in any suitable positions occupied at the date of abolition, or reduction of staff, by staff members recruited through competitive examination for a career appointment serving on a two year fixed-term appointment, by staff members holding fixed-term appointments and by staff members with temporary appointments.

61. Staff member(s) recruited through competitive examination for a career appointment serving on a two year fixed-term appointment have a lower level of protection than the staff members with continuing/indefinite appointments, and s/he has the right to be retained in any suitable positions vacant at the date of abolition or reduction of staff, or any suitable positions occupied at the date of abolition or reduction of staff, by staff members holding fixed-term appointments and temporary appointments.

62. Staff members holding fixed-term appointments have the right to be retained in any suitable positions vacant at the date of abolition or reduction of staff, or occupied at the date of abolition or reduction of staff by staff members with temporary appointments.

63. The Tribunal underlines in order for Administration to fully respect its obligation pursuant to staff rule 9.6(e), it firstly has the duty to timely provide staff member(s) affected by abolition of posts or reduction of staff with a list of: (a) all posts, a \_\_\_\_\_ occupied at the date of abolition by staff members with a lower level of protection than the one of the staff member(s) affected, if any; and (b) all the vacant suitable positions at the same level or at a lower level, if any. Secondly, the Administration has to provide a formal offer, together with the list or as soon as possible period after the notification of the list in order for the staff member(s) to be able to evaluate all the options and to timely express his/her interest accordingly after consultations between the parties and the staff union, if

necessary (in accordance with the mandatory provisions of art. 13.1 of the ILO Convention on Termination).

64. Further, the Tribunal underlines that staff member(s) affected by abolition of







Administrative Tribunal  
be regarded as persuasive.

61.

him or her in duties at a lower grade and to widen its search accordingly (see Judgments 1782, under 11, or 2830, under 9).

64. In Judgment No. 1782 (1998), the ILOAT applied staff rule 110.02(a)2 of the United Nations Industrial Development Organization, which is similar to staff rule 9.6(e) and, in para. 11, ruled as follows: What [staff rule 110.02(a)] entitles staff members

not just at the same grade but even at a lower one. In a case in which a similar provision was material (Judgment 346: in re Savioli) the Tribunal held that if a staff member was willing to accept a post at a lower grade the organisation must look for posts at that grade as well.

65.

staff member is deemed suitable the Organisation may then widen the pool of candidates and consider others including external candidates, but at all material times priority must be given to displaced staff on permanent appointments. The onus is on the Administration to carry out this sequential exercise prior to opening the vacancy to others whether by an advertisement or otherwise. Accordingly, an assertion

positions if she had not applied for them is an unjustifiable gloss on the plain words of staff rules 9.6(e) and 13.1(d) and imposes a requirement that a displaced staff member has to apply for a particular post in order to be considered. If that was the intention, the staff rule would have made that an explicit requirement. But most importantly, such a line of argument overlooks the underlying policy, in relation to structural reorganisation, of according preferential consideration to existing staff who are at risk of separation prior to considering others and giving priority to those holding permanent contracts.

75. The Tribunal notes that the purpose of staff rules 9.6(e) and









failure to follow its obligations to the Applicant, together with the appropriate level of compensation for moral damages.

*Rescission and pecuniary compensation*

80. As results from the above considerations, the contested decision to terminate the Applicant is unlawful and, pursuant to art. 10.5(a) of the Statute, to be rescinded. The Tribunal considers that the rescission of an unlawful termination decision has the *ope legis* effect of the parties being retroactively placed in the same contractual relationship that existed before the issuance of the rescinded decision. In line herewith, as the basis of any form of compensation, the Appeals Tribunal stated in Warren 2010-UNAT- place the staff member in the same position he or she would have been in had the

81. It results that, in case a termination decision is rescinded, the separated staff member is, in principle, to be retroactively reinstated in her/his former position and s/he is to receive his/her salary and other entitlements from the date when s/he was separated until her/his likely date of separation, as determined by the Dispute Tribunal. However, when a party or both parties expressly indicate that, due to the particular circumstances of a case the effective reinstatement no longer constitutes a possible option, the remedy can consist solely of compensation.

82. The Tribunal considers that, *mutadis mutandi*, in the present case, as an *ope legis* effect of the rescission of the termination decision,

her post, if applicable to UNHCR respecting her relative competence for such post(s) integrity and length of service as described in para. 60 above; *or*

b. Occupied by a non-permanent/non-indefinite staff member, or vacant either at the at her Professional





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:

entitlements arising from his or her contract of employment and/or from a breach of the procedural due process entitlements therein guaranteed (be they specifically designated in the Staff Regulations and Rules or arising from the principles of natural justice). Where the breach is of a *fundamental* nature, the breach may *of itself* give rise to an award of moral damages, not in any punitive sense for the fact of the breach having occurred, but rather by virtue of the harm to the employee.

(ii) An entitlement to moral damages may also arise where there is evidence produced to the Dispute Tribunal by way of a medical, psychological report or otherwise of harm, stress or anxiety caused to the employee which can be directly linked or reasonably attributed to a breach of his or her substantive or procedural rights and where the UNDT is satisfied that the stress, harm or anxiety is such as to merit a compensatory award.

give rise to an award of moral damages under (i) above, and whether or not such a breach will give rise to an award under (ii) will necessarily depend on the nature of the evidence put before the Di







## Conclusion

95. In the light of the foregoing, the Tribunal DECIDES:

a. The Application is granted in part;

b. The contested decision is rescinded and the Respondent is to retain the Applicant with retroactive effect from 31 December 2016 in any current suitable available post(s): (a) occupied by a non-permanent/non-indefinite staff member, or vacant either at the General Service level (at the GS-7 level or lower) at UNHCR in New York (her duty station), as identified in the job family(s) and/or job network(s) to which the Applicant belonged prior to the abolition of her post, if applicable to UNHCR; *or* (b) occupied by a non-permanent/non-indefinite staff member, or vacant either at the at her Professional ( P ) level or lower in the parent Organization (UNHCR), as identified in the job family(s) and/or job network(s) to which the Applicant belonged prior to the abolition of her post, if applicable to UNHCR;

c. In case the issuance of the decision to retroactively retain the Applicant from 31 December 2016 will no longer not possible within the deadline established by the Tribunal due to unforeseen circumstances, which are to be fully disclosed to the Applicant, pursuant to art. 10.5 (a) of the Statute, as an alternative to the rescission of the decision and to the specific performance ordered by the Tribunal, the Respondent may elect to pay full6(th)-11(e3)m Tm[75.



