Introduction

1. The applicant's fixed-term contract of appointment as an international staff member at the P-4 level with the United Nations Stabilization Mission in Haiti (MINUSTAH) was not renewed. The decision not to renew the contract, which expired on 31 October 2008, was made by the Chief of Mission Support (the CMS) on 23 July 2008. I have ruled in favour of the applicant on the question of liability, holding that the decision not to renew her contract was in breach of her contract of employment (*Beaudry* UNDT/2010/039). It is now necessary to consider what award of compensation should be made in respect of this breach.

Facts

2. These have been set out in detail in my previous reasons and it is unnecessary to refer to them again, except to point to those of particular relevance. This is an unusual case because the uncontradicted evidence of the Chief of Mission Support (CMS), who made the decision not to renew the applicant's contract, and the Chief of Mission Administrative Services (CAS), who recommended that course, was that it would have been renewed if they had appreciated that the applicant wished to renew

applicant s intentions and a significant procedural error, namely the failure to inform the applicant of the relevan

renewed if the decision had not been affected by error. The remaining uncertainty concerns the term of the potential contract.

8. There can be no doubt that the applicant s overall performance was entirely satisfactory. Indeed the CMS said that it was for this reason that his criticisms of the way in which the applicant managed her work colleagues in her unit did not lead him to qualify the overall appraisal rating of fully successful performance which he gave her. I infer that, though the applicant s management of her work colleagues was certainly not optimal and indeed inappropriate to a greater or lesser extent, the CMS was prepared to put up with these problems, in the hope no doubt of some improvement, because of the unit s success in productivity due to the applicant s evident skills. Moreover, more careful c

whether the applicant has a right to rene

12. The appropriate sum to award under this head of economic loss is, therefore, the applicable salary, plus post adjustment, less assessment, less pension deduction. There must be added the amount that would have be payable by way of pension, on the assumption that the applicant remained employed until 10 February 2011. In this respect the mode of calculation (not sought to be controverted by the respondent) proposed on the applicant's behalf should be adopted. Accordingly, the Administration is ordered to calculate both contributions the applicant would have made had her contract been renewed for a term on 10 February 2011, transfer this sum to the UNJSF together with the contribution which would have been made by the Administration and advise the UNJSF that, effective 10 February 2011, it should proceed on the basis that the Applicant has satisfied the prerequisites for payment of pension entitlements. The Administration is to deduct from the award made under this head the total sum paid to the applicant on separation in respect of her pension contributions plus interest at the average earned on deposits by the UNJSF from the date of payment to the date upon which it deposits those funds with the UNJSF.

13. There is no other evidence of economic loss and I pass to the question of non-economic loss. This encompasses compensation for significant and foreseeable changes in the applicant's life situation caused or substantially contributed to by the respondent's breach of contract and which is not remote in the sense of being within the constructive (as likely) contemplation of the parties in the event of such breach. The applicant has not tendered any evidence of this kind and there is therefore no evidentiary basis for any award under this head.

14. There was evidence during the hearing of the considerable personal distress caused to the applicant when she was informed of the refusal to extend her contract and I think that it is fair to infer this has continued to the present day, though no doubt over time it has moderated somewhat. I also consider that the need to undertake proceedings in which the criticisms in her e-PAS have been made public, together with her other shortcomings as a manager in the course of the evidence. This has been caused directly by the respondent's breach of contract and was plainly

a constructively contemplated consequence of forcing her to litigate to vindicate her contractual rights. Under this head I award the sum of USD4,000.

15. The applicant seeks compensation for the failure to give proper consideration to her request for an exception to permit rebuttal of her e-PAS appraisal. The right to rebut negative appraisals is extremely valuable. Here, the applicant indicated from the very beginning that she wished to dispute the negative comments made by her reporting managers. The refusal to give her consideration to her request to be permitted to do so outside the relevant time limit and even to give her an answer as to whether it had been decided or not, was a breach of a significant and valuable right in her circumstances which has now continued for a substantial time. The appropriate compensation for this breach is USD6,000.

The limit on damages

16. [illegible] an exception [illegible] 5 T[illegible] breach of [illegible] 3T[illegible]dr 5(b) a b out Tribunal right T0 1 Tf 0 10.83 Tw 6.8[illegible] s Stat T[illegible]

that these statements, working from first principles, apply to the interpretation of art 10.5(b).

17. What, then, are the considerations that are relevant to the determination of the existence of an exceptional case? It seems to me that, whilst some injustice must be accepted as inevitable, there may well be cases where the injustice is so great, the amount of loss so significant, that this alone must be regarded as exceptional. This can only be assessed, as it seems to me, in light of the circumstances of the applicant as presented in evidence. To take an extreme case, where the limitation would cause him or her economic catastrophe, the inability to sustain or support his or her family, the loss of a home, or similar outcomes, I should think such a case would be exceptional within the ordinary meaning of the word. On the other hand, cases where the effect of the limitation is to reduce the compensation by a relatively small percentage of the total, so that the level of loss is not much greater than inconvenience, having regard to the situation in which the applicant finds him or herself, would not to my mind be relevantly exceptional. On the contrary, this would, I should think, be precisely the kind of case in which the General Assembly considered that the injustice caused was justified by whatever policy considerations