



Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 1015

Cases No. 1143: BARUCH SMITH
No. 1144: BARUCH SMITH

Against: The Secretary-General
of the United Nations

THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL,

Composed of: Mr. Mayer Gabay, President; Mr. Omer Yousif Bireedo; Mr. Spyridon Flogaitis;

Whereas at the request of Debra Baruch Smith, a staff member of the United Nations Children's Fund (hereinafter referred to as UNICEF), the President of the Tribunal, with the agreement of the Respondent, granted an extension of the time limit for filing an application with the Tribunal until 31 May 2000 and thereafter until 31 July 2000;

Whereas, on 7 July 2000, the Applicant filed Applications in case No. 1143 (the "first case") and in case No. 1144 (the "second case") containing pleas which read as follows:

"II. PLEAS

7. With respect to competence and procedure, the Applicant respectfully requests the Tribunal:

[First and second cases]

...

- (c) *To decide* to hold oral proceedings on the present Application in accordance with Article 8 of its Statute and Chapter IV of its Rules; and
- (d) *To join* consideration of the Applicant's other Application filed simultaneously with this one.

8. On the merits, the Applicant respectfully requests the Tribunal:

[First case]

- (a) *To reject* the findings of the Joint Appeals Board (JAB) that the Applicant's rights were not violated by the rejection of the recommendations of the panel on Discrimination and Other Grievances and that her allegations of discriminatory treatment and bad faith had not been proven, therefore making no recommendation in support of her appeal;
- (b) *To find* that, contrary to the views of the [JAB], the failure of [the] Respondent to address the issues of discriminatory treatment raised in [the] Applicant's claims constitutes a violation of her contractual rights; that the procedural irregularities and evidence of improper motivation on the part of [the] Respondent's agents constitute discriminatory and prejudicial treatment; that the refusal of the UNICEF Administration to redress the continuous pattern of harassment and hostile work environment constitutes an abuse of authority and denial of fair treatment;
- (c) *To order* that [the] Applicant be awarded three years' net base pay for the resulting damages to her career, health and reputation caused by [the] Respondent's actions or lack thereof; and that UNICEF be instructed to make suitable administrative arrangements in accordance with the medical advice provided, to prevent a recurrence of the harassment and discriminatory treatment previously experienced by [the] Applicant, including appropriate guarantees of job security.

[Second case]

- (a) *To reject* the findings of the [JAB] that the Applicant's rights were not violated by the abolition of her post and that her allegations of abuse of authority, discrimination and improper motivation had not been proven and that the procedures applied to the Applicant for redeployment only after her return to active duty were not in violation of the staff rules and pertinent administrative instructions;

- (b) *To find and rule* that the decision of the Respondent to abolish the Applicant's post and not to place the Applicant in her former job or in another permanent core post violated her rights to fair treatment and was improperly motivated, procedurally flawed and fell short of the requirement of full and fair consideration;
- (c) *To rescind* the Respondent's decision to endorse the recommendation of the [JAB] upholding the actions by UNICEF;
- (d) *To order* that the Applicant be placed immediately in a permanent post at her present level or higher and commensurate with her skills and experience;
- (e) *To award* the Applicant appropriate compensation in the amount of three years' net base pay for the actual, consequential and moral damages suffered by the Applicant as a result of the Respondent's actions or lack thereof."

Whereas, at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent answer in each case until 31 December 2000 and thereafter until 31 March 2001;

Whereas the Respondent filed his Answers on 12 March 2001;

Whereas the Applicant filed Written Observations in the "second case" on 19 September 2001 and in the "first case" on 20 September 2001;

Whereas, on 17 October 2001, the Applicant submitted an additional communication;

Whereas the Tribunal decided on 30 October 2001, that there would be no oral proceedings in either case;

Whereas the facts in the cases are as follows:

The Applicant entered the service of UNICEF on 13 May 1985, as a Secretary at the G-3 level with the Director's Office, Department of Personnel. Her short-term contract was subsequently extended and she received promotions to the G-4 and G-5 levels. On 1 November 1989, she was granted a probationary appointment as a Principal Secretary at the G-5 level. Her appointment was made permanent on 1 May 1990. At the material time, the Applicant held the position of Media Assistant, Media Relations and Emergencies Section, Division of Information (DOI), UNICEF.

On 11 October 1994, the Applicant prepared a "Note for the record" for the Director, DOI, listing various complaints including that she was being supervised by consultants, and that she had suffered "a deliberate and concerted pattern of harassment to the detriment of [her] health". The Director, DOI, replied on 20 October 1994, stating that a solution would be found to facilitate the work requirements. In addition, she requested a schedule of the Applicant's frequent absences from the office. In her response of 22 October 1994, the Applicant requested that the Division of Personnel (DOP) intervene to find "a suitable solution to this troubling situation".

On 26 October 1994, the Applicant met with the UNICEF Ombudsperson. The Ombudsperson advised the Applicant to discuss her concerns with the Director, DOI, and to report back to him. On 8 November 1994, however, the Ombudsperson declined to pursue the matter further.

On 9 November 1994, the Applicant submitted her complaints of harassment to the Panel on Discrimination and Other Grievances (the Panel on Discrimination).

On 3 March 1995, a Personnel Officer, UNICEF, advised the Director, DOI, that, on 1 May 1995, the Applicant would be eligible for review of confirmation of her permanent appointment. Accordingly, she requested a recommendation and a performance evaluation report (PER).

On 15 May 1995, the Applicant met with the Deputy Director, DOP, to request special leave without pay (SLWOP) for two years

On 4 August 1995, the Director, DOI, encouraged the Applicant "to seek a less pressured environment where she would be happier and more able to deliver consistently good work which she is certainly capable of". On 10 August 1995, the Applicant advised the Personnel Officer, DOP, that she disagreed with certain critical statements in the 4 August letter which would have been more appropriate in a rebuttable PER. She cited these remarks as further evidence of the "discrimination and harassment" she had suffered.

On 13 September 1995, the Applicant wrote to the Executive Director, UNICEF, requesting SLWOP for two years while maintaining a lien on her post and her permanent appointment.

On 10 October 1995, the Applicant went on certified medical leave.

On 12 October 1995, the Executive Director replied to the Applicant's 13 September letter, offering her a one-year leave period, to include a combination of annual leave and leave without pay, with a lien on a post within UNICEF. She advised the Applicant that, if the Organization were unable to place her upon her return to duty or if she refused the first offer of a suitable post, she would be separated from service. The Applicant responded on 30 October 1995, that, as she was on sick leave, she would have to "defer any long-term decisions until [her] medical condition improved". In a letter dated 22 November 1995, the Officer-in-Charge, DOP, advised the Applicant that the Executive Director's offer would be withdrawn if it had not been accepted by 8 December 1995. On 28 December 1995, the Officer-in-Charge, DOP, advised the Applicant that the matter of her leave without pay would be held in abeyance until her sick leave had been completed.

On 21 March 1996, the Panel on Discrimination submitted its report to the Executive Director, UNICEF. It found that the Applicant had been "adversely affected by the stressful work situation in her Division" and recommended that she be granted SLWOP and another post be found for her either in UNICEF or elsewhere within the United Nations.

On 18 April 1996, the Applicant proposed that she be granted leave with full pay. She would waive any future claims she might have against UNICEF arising out of her previous employment or her request for leave in exchange for a grant of six months of special leave with full pay, an additional one year of SLWOP with the possibility of extension for a further six months, and the blocking of a post for her return to service.

In a memorandum copied to the Applicant, on 9 May 1996, Dr. Narula of the United Nations Medical Services Division informed the Deputy Director, DOP, that the Applicant could qualify for a disability benefit from the United Nations Joint Staff Pension Fund.

On 30 May 1996, the Deputy Director, Operations, UNICEF, advised the Coordinator of the Panel on Discrimination that UNICEF was unable to accept the Panel's recommendations.

On 10 June 1996, the Applicant wrote to the Secretary-General, requesting administrative review of UNICEF's failure to redress her complaints of harassment and

discrimination (the "first case"). She attached a copy of the report of the Panel on Discrimination and claimed that Dr. Narula's letter of 9 May 1996 further evidenced discrimination against her, as her own doctor had not determined her to be permanently disabled. The Applicant subsequently lodged an appeal in the "first case" with the JAB on 16 July 1996.

On 17 September 1996, the Applicant was placed on SLWOP on medical grounds.

On 23 December 1996, the Director, Division of Human Resources (DHR), asked the Applicant to have her medical condition assessed and advised her that, if she were to be found medically fit to return to duty but required additional time off, UNICEF was prepared to further review her earlier request for SLWOP. In addition, he informed the Applicant that the Budget Planning and Review Committee (BPRC) had recommended her post for abolition in accordance with an upcoming restructuring exercise and that, if she could not be otherwise placed, her appointment would be terminated six months from the date of her return to active duty. He explained that she would be considered for placement against suitable vacant posts upon her return to duty. On 23 January 1997, the Applicant replied that this letter constituted further harassment against her.

On 1 April 1997, the Applicant returned to duty. On 7 April 1997, she requested administrative review of the decision to abolish her post and to consider her for placement only after her return to duty (the "second case").

In a letter dated 18 April 1997, the Director, DHR, informed the Applicant that he was regretted that she had not followed his request to make an appointment for a medical assessment. He advised her that the decision to abolish her post had been made independent of the issues of her health or pending appeal. In addition, he informed her that, as she had now returned to duty, she was being considered for appropriate vacancies.

On 24 April 1997, the Applicant went on medical leave. On 3 June 1997, she lodged an appeal with the JAB in the "second case".

When the Applicant returned to duty on 6 June 1997, it was in her newly-elected position as Chairperson of the UNICEF Global Staff Association (GSA). She was placed against a supernumerary post for the two-year duration of her service with the GSA but was advised that regular placement for her would continue to be sought.

On 31 December 1997, the Applicant was told she had been selected for the G-5 level post of Senior Training Clerk, a lien on which would be maintained until the expiration of her term as Chairperson of the GSA. Despite the fact that this post was a project post, she would retain her rights as the holder of a permanent contract.

The JAB submitted its report in the "first case" on 27 September 1999. Its considerations, conclusions and recommendation read, in part, as follows:

"Considerations

...

54. ... The Panel considered that it was within the discretionary authority of the Secretary-General to accept or reject, in full or in part, the recommendations submitted by ... advisory bodies, and that the exercise of a discretionary authority could not infringe the rights of a staff member, unless it was proven that such discretionary authority had been abused beyond the requirements of the applicable regulations.

55. ... It was evident to the Panel that the UNICEF Administration had given due and careful consideration to the recommendations of the Discrimination Panel and provided clear reasons for not accepting them.

58. The Panel took note of the parties differing accounts of the incidents which the Appellant perceived as part of the pattern of harassment against her. It carefully went through the copious materials provided by the parties, but found itself unable to pronounce whether the work-related harassment as alleged had indeed occurred.

59. With respect to the issues of the suggestion of the Appellant's treating physician and the proposal by her legal representative, the Panel was of the view that they represented the opinions of the non-UN professionals and were recommendations only. The UNICEF Administration should, and did in the present case, take them into account before taking any decision affecting the Appellant's term of employment. However, it was not obliged to accept them, if to do so would not be in the best interest of the Organization, and its refusal to accept the suggestion of the Appellant's treating physician or the proposal of her legal representative came within the scope of its managerial discretion, and in no way violated the Appellant's rights as a staff member.

...

Conclusions and Recommendations

61. The Panel *unanimously agreed* that the refusal by the UNICEF Executive Director to accept the recommendations of the Discrimination Panel was a valid exercise of her delegated discretionary authority and that it did not violate any of the Appellant's rights as a staff member.

62. The Panel *unanimously agreed* that the refusal by the UNICEF Executive Director to accept the suggestion of the Appellant's treating physician or [the Appellant's proposal of 18 April 1996] did not violate the Appellant's terms of appointment within the meaning of Staff Regulation 11.1.

63. The Panel makes no recommendation in support of the appeal."

On 15 October 1999, the Under-Secretary-General for Management transmitted a copy of the JAB report in the "first case" to the Applicant. He informed her that the Secretary-General agreed with the Board's conclusions and recommendation, and had decided to take no further action on her appeal.

On 18 October 1999, the Applicant was re-elected for an additional two-year term as Chairperson of the GSA.

On the same date, the JAB submitted its report in the "second case". Its conclusions and recommendation read as follows:

"Conclusions and Recommendations

44. In light of the foregoing, the Panel *unanimously agreed* that the decision to abolish the post encumbered by the Appellant pursuant to Staff Regulation 9.1 (a) could not have violated any of her rights as a staff member, and that the Appellant had failed to carry the burden to prove that the challenge decision was the product of abuse of the Secretary-General's discretionary authority or bad faith, ulterior motivation, discrimination or specious or untruthful reasons.

45. The Panel also *unanimously agreed* that UNICEF's decision to place the Appellant's name on a roster for review against vacant posts for redeployment only after her return to active duty was reasonable under the special circumstances of the case, and it did not run counter to the spirit and intention of either Staff Rule 109.1 (c) of CF/AI/1986-10.

46. The Panel makes no recommendation in support of the appeal."

On 21 December 1999, the Under-Secretary-General for Management transmitted to the Applicant a copy of the JAB report in the "second case". He informed her that the Secretary-General agreed with the Board's conclusions and recommendation, and that he had decided to take no further action on her appeal.

On 7 July 2000, the Applicant filed the above-referenced Applications with the Tribunal.

Whereas the Applicant's principal contentions in the "first case" are:

1. A continuous pattern of harassment and discrimination created an impermissible hostile work environment for the Applicant and caused damage to her health and her career.
2. Procedural irregularities in the Applicant's case resulted in unfair and discriminatory treatment.
3. The Organization violated the Applicant's rights of due process and her right to fair treatment.
4. The JAB erred in concluding that the appeal was without merit.

Whereas the Respondent's principal contentions in the "first case" are:

1. The JAB did not err in concluding that the appeal was without merit.
2. The Administration followed established rules and procedures in rejecting the report and recommendations of the Panel on Discrimination.
3. The Applicant has failed to sustain the burden of proving her allegations of harassment, discrimination and a hostile work environment.
4. The Applicant's rights as a staff member were not violated.

Whereas the Applicant's principal contentions in the "second case" are:

1. The abolition of the post encumbered by the Applicant was in violation of the letter and spirit of staff regulation 9.1 (a).
2. The Respondent failed to follow his own procedural guidelines in considering the Applicant for placement in suitable vacant posts.

3. The Respondent refused to address a documented pattern of bias against the Applicant.
4. The Respondent's actions were arbitrary and constituted an egregious abuse of authority.

Whereas the Respondent's principal contentions in the "second case" are:

1. The reorganization which resulted in the abolition of the Applicant's post was correctly conducted in accordance with the regulations, rules and administrative instructions of the Organization.
2. The reorganization was not vitiated by bias, prejudice or any other improper motive.
3. As an exercise of managerial discretion, divisional reorganization is not properly the subject of an application to the Tribunal.
4. The decision to consider the Applicant for placement only after her return to duty, and to toll the commencement date of the notice period for possible separation from service, was properly taken.
5. The Applicant was not damaged by the contested decision.

The Tribunal, having deliberated from 30 October to 20 November 2001, now pronounces the following Judgement:

I. The Applicant has filed two Applications concerning two different legal wrongs arising from two different administrative decisions which are sufficiently related to be considered jointly. The Tribunal will therefore deal with them both in the same Judgement.

II. In her first Application, the Applicant challenges the decision of the Respondent of 15 October 1999, adopting the JAB's report which rejected the recommendations of the Panel on Discrimination. The Applicant claims that the JAB erred when it concluded that her appeal was without merit and that the Organization did not follow established rules and procedures when it

rejected the Panel's recommendations. She further claims that the Respondent's failure to address the issues of discriminatory treatment, and refusal to redress the continuous pattern of harassment and hostile work environment, constitutes an abuse of authority, denial of fair treatment and a violation of her rights of due process.

III. The Applicant joined UNICEF as a Secretary at the G-3 level in the Division of Personnel in May 1985 and, following a series of promotions, was transferred to the Media Relations and Emergencies Section in the Division of Information (DOI), in December 1990, as a Media Assistant at the G-5 level.

On 11 October 1994, the Applicant detailed in a note for the record her first complaints of harassment and discriminatory treatment. Although the Director, DOI, promised to find a solution to the various problems raised by the Applicant, the situation escalated, requiring the intervention of the Division of Personnel and the UNICEF Ombudsperson. The Applicant subsequently submitted her complaints to the Panel on Discrimination. The Panel found that the Applicant had been adversely affected by the stressful situation in her Division, and recommended that she be granted SLWOP and that another post be found for her.

Following extended periods on SLWOP and certified medical leave, the Applicant was offered disability benefits from UNICEF, which she declined. She requested further periods of SLWOP. When she was informed that UNICEF was unable to accept the recommendations made by the Panel on Discrimination, the Applicant wrote to the Secretary-General on 10 June 1996, requesting review of UNICEF's failure to redress her complaints of harassment and discrimination.

IV. On 16 July 1996, the Applicant lodged her appeal with the JAB, claiming that UNICEF had wrongly rejected the recommendations of both the Panel on Discrimination and her personal physician that some form of administrative action be taken to prevent the Applicant's further subjection to a hostile work environment. In addition, the Applicant challenged UNICEF's failure to agree to her request for two years leave, both "with and without pay against a post blocked for [her] return to service".

The JAB unanimously concluded that "the refusal by the Executive Director, UNICEF, to accept the recommendations of the Discrimination Panel was a valid exercise of her delegated discretionary authority and that it did not violate any of the Appellant's rights as a staff member". The JAB also concluded that "the refusal by the UNICEF Executive Director to accept the suggestion of the Appellant's treating physician or the [Applicant's proposal of 18 April 1996] did not violate the Appellant's terms of appointment within the meaning of staff regulation 11.1". On 15 October 1999, the Under-Secretary-General for Management notified the Applicant that the Secretary-General agreed with the JAB's conclusions and had decided to take no further action.

The Application in the "first case" followed.

V. The Applicant claims that the JAB erred in finding that her appeal was without merit and that the rejection of her appeal violated her rights of due process. The Respondent argues that the JAB took into consideration the complete and correct record, and that its deliberations accorded with the requirements of due process free from bias, discrimination, abuse of authority or other improper motivation.

The JAB stated in its report that "[i]t was evident to the Panel that the UNICEF Administration had given due and careful consideration to the recommendations of the Discrimination Panel and provided clear reasons for not accepting them". Moreover, the JAB pointed out that,

"[although it] had hoped to uncover something that would disprove UNICEF's claim of procedural irregularity [it found] ... with dismay that the Discrimination Panel did not maintain a working file on the Appellant's case. Without the benefit of any record of the procedural history of the case, the [JAB] had no idea as to how the Discrimination Panel had conducted its investigation, except to observe that the report of the Discrimination Panel appeared to reflect only one party's opinion."

VI. The Tribunal also notes the Respondent's argument that the Panel on Discrimination failed to meet the requirements of due process set forth by the relevant Administrative Instructions binding on all organizational bodies. Administrative instruction ST/AI/308/Rev.1, entitled "Establishment of Panels on Discrimination and Other Grievances" of 25 November 1983, establishes that recommendations from the Panel are advisory and may be rejected or accepted by the Secretary-General in the exercise of his discretionary authority, provided that the

requirements of due process are strictly adhered to. (See Judgement No. 621, *Berrezoug* (1993).) According to paragraph 11 of ST/AI/308/Rev.1, once a panel member has initiated the investigation of a case, "he or she must inform the staff member concerned and the other party or parties involved in a confidential manner". The Respondent claims that he was not notified or consulted by the Panel and had no opportunity to submit a response, as reported by the JAB. The JAB concluded in this regard that, based on the evidence,

"[I]t was more probable than not that the Discrimination Panel had not informed the UNICEF Administration that the Appellant had filed a harassment grievance, and that it had failed to seek the views of the UNICEF Administration during its investigation, as it was required to do so under ST/AI/308/Rev.1. The procedural failure on the part of the Discrimination Panel constituted violation of the due process rights of the Respondent, and cast serious doubt on the impartiality and validity of its report and recommendations."

The Tribunal accepts the JAB report, which was a fair and detailed examination of the facts. The Tribunal finds that the JAB did not err in concluding that the appeal was without merit and that the Respondent's rights were violated by the Panel on Discrimination.

VII. The Applicant also alleges that a continuous pattern of harassment and discrimination created an impermissible hostile work environment and that her rights as a staff member were violated. The Respondent claims that the Applicant's complaints of harassment and hostile work environment were examined on an ongoing basis, and were found to be without merit; the Applicant's allegations of discrimination do not constitute proof of discrimination, harassment, or hostile work environment; and, the Director, Division of Personnel, and the Executive Director, UNICEF, took the time to address the Applicant's concerns.

The Applicant states that she was singled out to work late, there was a delay in processing her confirmation, and she endured irregular work conditions. However, the Respondent claims that all the work given to the Applicant fell within the scope of her employment duties. Specifically, he contends that many staff members were required to work late, a three-month delay in completing necessary formalities is neither unreasonable nor discriminatory, and there was no evidence that the Applicant suffered either discriminatory or unreasonable work conditions. The Applicant's concerns and complaints were appropriately

handled in accordance with the administrative issuances of the Organization and the Staff Regulations and Rules. In view of the facts presented by the Applicant, coupled with the Respondent's efforts to find an amicable solution for the Applicant, the Tribunal finds that the Applicant's claims of discrimination are without merit.

It has long been established by the Tribunal that the burden of proof rests with the party alleging discrimination and harassment. (See Judgements No. 93, *Cooperman* (1965); No. 312, *Roberts* (1983); No. 327, *Ridler* (1984); and No. 470, *Kumar* (1989).) The Tribunal finds that the Applicant has failed to meet the burden of proving discrimination and harassment.

VIII. Accordingly, the Tribunal rejects the first Application.

IX. In the second Application, the Applicant claims that the decision of 21 December 1999, abolishing her post, violated her rights.

The Applicant alleges that the abolition of her post was in violation of the letter and spirit of staff regulation 9.1 (a) which states, "the Secretary-General may terminate the appointment of a staff member who holds a permanent appointment and whose probationary period has been completed, if the necessities of the service require abolition of the post or reduction of the staff ..." She also argues that the Respondent failed to apply established policies with regard to the placement of staff in abolished posts.

According to the Respondent, the abolition of the Applicant's post was a managerial initiative in the context of a broad reorganization plan which was properly executed after a series of organizational recommendations and approval of the Executive Director, UNICEF, and the Executive Board, UNICEF. The Respondent claims that he has wide discretionary authority in the area of redeployment if executed in a non-arbitrary, non-capricious way and that the Applicant was only one of many staff members affected by the reorganization. Furthermore, he contends that the reorganization took place in full compliance of all appropriate regulations, rules and administrative issuances (specifically staff regulation 9.1 (a), staff rule 109.1 (c), and CF/AI/1986-10 entitled "Personnel Policies And Procedures Applicable To Incumbents of Posts Which Are To Be Abolished", of 26 November 1986) and the abolition of all posts was done indiscriminately. The Tribunal has held that reorganization decisions fall within the

discretionary powers of the Administration. (See Judgements No. 117, *van der Valk* (1968); and, No. 412, *Gross* (1988).) The burden of proving discrimination, improper motivation, bias or abuse in connection with the abolition rests on the Applicant. (See *Cooperman, Roberts, Ridler* and *Kumar, ibid.*, and Judgement No. 639, *Leung-Ki* (1994).) In the Tribunal's opinion, the Applicant failed to meet this burden.

X. The Tribunal also takes note of the Respondent's claims that the decision to consider the Applicant for placement only after her return to duty and to toll the commencement date of the notice period for possible separation until such date, was in full compliance with CF/AI/1986-10. This Administrative Instruction links the commencement of the notice period to the commencement of the placement process and the affected staff member must be considered for placement against suitable vacancies.

After the Applicant returned to duty the notice period commenced; until then the Applicant had no right to placement. The Tribunal finds that the Respondent provided the Applicant with the opportunity to obtain a new post in which her services could be effectively used and the Organization tolled the notice period until she was fit to return to work. The Tribunal also finds that the Respondent took careful measures to consider the Applicant for placement and that the toll of the commencement date was appropriate.

XI. Accordingly, the Tribunal rejects the second Application.

XII. In conclusion, the Tribunal finds that the Applicant received full and fair consideration throughout the administrative process. It holds that the JAB did not err in its recommendations and that the Respondent's decision to reject the Panel on Discrimination's recommendation and to adopt the recommendations of the JAB instead was within the Respondent's discretionary authority and satisfied the requirements of due process.

The Tribunal also holds that the decision to abolish the Applicant's post and to place her in a similar post only after her return to duty was done in accordance with the Regulations and Rules of the Organization and was in no way tainted by discrimination, bias, lack of due process or other extraneous considerations.

XIII. For the foregoing reasons, the Tribunal rejects all of the Applicant's pleas, in both cases, in their entirety.

(Signatures)

Mayer GABAY
President

Omer Yousif BIREEDO
Member

Spyridon FLOGAITIS
Member

New York, 20 November 2001

Maritza STRUYVENBERG
Executive Secretary