

**Administrative Tribunal**

Distr.: Limited
30 September 2003
English
Original: French

ADMINISTRATIVE TRIBUNAL

Judgement No. 1138

Case No. 1207: GICHOMO

Against: The Secretary-General of the
United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Julio Barboza, President; Mr. Omer Yousif Bireedo;
Ms. Brigitte Stern;

Whereas on 6 July 2001, Mr. Francis Amos Gichomo, staff member of the
United Nations, filed an application in which he requested the Tribunal to:

“...

3. ... order the adoption of the report ... of the Joint Appeals Board.
4. ... award compensation amounting to \$100,000 for injury sustained...
5. ... award compensation amounting to \$100,000 for unfair rationale applied by the Administration in the decision to deny [him] a P-2 post...
6. ... award compensation amounting to \$100,000 for the financial embarrassment caused ... when the Personal Transitional Allowance (PTA) was abruptly and arbitrarily withdrawn.
7. ... award compensation amounting to \$100,000 for mismanagement of [his] career.
8. ... award compensation amounting to \$100,000 for the stress and humiliation to which [he] was subjected...
9. ... award any other relief it may deem fit in the interest of justice.”

Whereas at the request of the Respondent the President of the Tribunal extended the time limit in which to file an answer until 31 October 2001 then, successively, until 31 August 2002;

Whereas the Respondent filed his reply on 30 August 2002;

Whereas, on 28 October, the Applicant submitted written observations in which he amended his conclusions as follows:

“... ”

The Tribunal is requested to:

(c) Order the United Nations Office at Nairobi (UNON) to ... request ... additional resources for the creation of a P-2 post...

(d) Order resumption of the Applicant's PTA effective 1 January 2000 until the P-2 post is made available...
...”

Whereas the Applicant submitted an additional document on 20 June 2003;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations Centre for Human Settlements (UNCHS) on 1 August 1984, serving as a computer programmer assistant at the GS-8 level on a six-month fixed-term appointment. On 1 April 1988, his functional title was changed to that of senior programmer assistant and, on 1 October 1989, he was promoted to the GS-9 level. On 1 January 1992, his fixed-term appointment was converted to a permanent appointment.

In September 1991, in accordance with the Global Classification Standard for Non-Headquarters Duty Stations (“Global Classification Standard”) approved by the International Civil Service Commission (ICSC), the nine-level General Service scale in Nairobi was converted to a seven-level scale. As a result, on 1 May 1993, the Applicant's post was classified at the GS-7 level and his grade was converted to the GS-7 level from the GS-9 level. As of 1 January 1996, the Applicant's post was transferred from UNCHS to UNON, upon the establishment of that office, to the Information Technology Service (ITS). On 16 December 1993, the Applicant appealed the decision to classify his post at the GS-7 level.

On 29 March 1996, the UNON Human Resources Management Service (HRMS) informed the Applicant that his post had been appropriately graded in the General Service category at the GS-7 level and that the decision regarding the classification of the post would “be submitted to the New York General Service Classification Appeals and Review Committee (NYGSCARC) in due course for their review and recommendation”.

On 2 June 1998, that Committee reviewed the Applicant's case and recommended that "the post be reclassified from the General Service to the Professional category".

On 5 June 1998, the Assistant Secretary-General for Human Resources Management informed the Applicant that the job description would be resubmitted to the Office of Human Resources Management to determine the classification level. She added that once the classification level of the post was determined he could be promoted to the Professional category, on an exceptional basis, provided that UNON obtained approval for the reclassification under the established budgetary procedure and provided that it certified that he had satisfactorily performed the functions described in the job description for at least three years prior to the implementation date of the classification. Pending approval, the staff member would receive a personal transitional allowance until the date of implementation. The Applicant did receive a PTA with effect from 1 May 1993.

On 2 December 1998, the Chief of the Division of Administrative Services (DAS), UNON, informed the Chief of HRMS that UNON was not in a position to allocate resources for the creation of a new Professional post. The only solution would be to treat the Applicant and the other staff member also recently promoted to the P-2 level equally by promoting the Applicant without the allocation of a post. A determination would then have to be made "through regular procedures" as to which of the two staff members would be assigned to the one available P-2 post. The other would be offered an agreed termination or reassigned elsewhere.

On 5 November 1999, OHRM informed HRMS that the Applicant's post was "classifiable" at the P-2 level with the functional title of associate computer information systems officer.

On 6 December 1999, the Applicant was informed that, since efforts to transfer him to another suitable post had been unsuccessful and given the lack of a budgeted P-2 post, his permanent appointment was being terminated in accordance with Staff Regulation 9.1 (a), effective 31 December 1999, and that he would receive termination indemnity as well as compensation in lieu of notice. On 7 December 1999, the Applicant requested the Nairobi Joint Appeals Board to suspend the administrative action to terminate his permanent appointment.

On 22 November 1999, the Joint Appeals Board recommended that the administrative decision to terminate the Applicant's appointment should be suspended and, on 23 December 1999, the Secretary-General accepted the recommendation and suspended implementation of the contested decision until such time as the appeal could be decided on the merits. On 18 January 2000, the Chief, DAS, informed the Applicant that his permanent appointment would be retained at the GS-7 level and that his PTA would be discontinued as of 1 January 2000. In addition, UNON would seek "to obtain the necessary budgetary resources to create a P-2 post in order to accommodate his promotion to the P-2 level as a result of [the Applicant's] classification appeal".

On 15 February 2000, the Applicant requested a review of the administrative decision to rescind his personal transitional allowance until he could be promoted to the Professional category.

On 12 May 2000, the Applicant submitted his appeal to the Joint Appeals Board. The Board adopted its report on 6 December 2000. Its considerations, conclusions and recommendations read, in part, as follows:

"Considerations

...

The case hinges on the interpretation of annex I, section 6, of ST/AI/389 of 13 October 1993...

...

... the post which the [Applicant] is presently encumbering can be said to be the same post which he was encumbering with UNCHS, only allocated to a different agency. Therefore the [JAB] concluded that the reclassification notice is directly relevant to the present post of the [Applicant] at UNON.

In this context, the [JAB] placed great importance on the fact that the [Applicant] ... had been effectively performing functions at a professional level satisfactorily for over three years as required by ST/AI/389...

Because of the retroactive effect of the reclassification ... the [Applicant] in effect had been assigned to UNON in 1996, with all conditions ... fulfilled, but for the budgetary approval.

It is for these reasons that the [JAB] cannot accept the Respondent's argument that the [Applicant] would not have been taken over by UNON, if the true classification of his post had been known in 1996...

...

... the [JAB] further concluded that the right to payment of Personal Transitional Allowance can never be stronger than the right to promotion,

which is the ultimate result towards which the successful upward reclassification is directed.

... leads the [JAB] to conclude that any violation of a staff member's right to promotion will automatically entail a violation of the staff member's right to Personal Transitional Allowance.

...

... The crucial question therefore for the [JAB] was, whether the [Applicant] had received fair consideration of his right to Personal Transitional Allowance...

... there had only been one attempt, namely by letter of 18 January 2000, by the Chief, Division of Administrative Services, to obtain the budgetary approval for the creation of a P-2 post in UNON and ... that this request had been denied by the Controller without further explanation.

The [JAB] considered that this attempt had been inadequate and that it does not fulfil the requirement of making good faith efforts to obtain the necessary budgetary resources for promotion of the [Applicant] to the P-2 level ...

...

Conclusions

The [JAB] concludes that the discontinuation of Personal Transitional Allowance has violated [Applicant's] rights and that good faith efforts have not been made to obtain the necessary budgetary approval for the creation of a P-2 post within UNON.

Recommendations

- 1. The [JAB] recommends that the Personal Transitional Allowance be retroactively reinstated as of 1 January 2000 and that such payment should be continued until a final decision on the budgetary approval for the creation of a P-2 post within UNON for the [Applicant] has been made.**
- 2. The [JAB] further recommends to the [Respondent] that Administration, UNON, be directed to request budgetary approval for the creation of a P-2 post within UNON in regards to the post that the [Applicant] is encumbering. This directive should be implemented immediately, so as to ensure that the request is introduced into UNON's budget for the biennium 2002-2003. UNON Administration should be further directed to support its budgetary submissions relating to this case with all the necessary supporting documentation.**
- 3. The [JAB] also recommends that, with the above-mentioned appropriate request and submission by UNON, DAS, the Controller should be directed to make appropriate resources available for the creation of a P-2 post, to enable implementation of the [Applicant's] promotion."**

On 28 June 2001, the Under-Secretary-General for Management transmitted the JAB report to the Applicant and informed him that:

“...

The Secretary-General is not in accord with the Board's conclusions. In accordance with administrative instruction ST/AI/389, the implementation of the upgrading of your post and your promotion to the upgraded post was subject to the condition of obtaining approval for a P-2 post in UNON's budget. Pending such approval, you were to receive a PTA until the date of implementation. UNON's attempt to obtain such approval was not successful and, moreover, UNON's functional needs do not require an additional P-2 post in your occupational category. Therefore, contrary to the Board's conclusion, the condition stipulated in ST/AI/389, i.e., to obtain budgetary approval, was not met. Accordingly, the implementation of the upgrading of your post and your promotion thereto could not be effected and the payment of the PTA had to cease.

In light of the above, the Secretary-General has decided to retain your permanent appointment at the G-7 level without PTA. However, taking into account the totality of circumstances in this case, including the delay in considering your classification appeal which was concluded only after you were assigned out of UNCHS to a different organizational and functional context, the Secretary-General has decided that you should be compensated in the amount of three months net base salary.

...”

On 6 July 2001, the Applicant filed with the Tribunal the application referred to above.

Whereas the Applicant's principal contentions are:

1. The Administration acted in an arbitrary and discriminatory manner when it denied him a promotion.
2. The Applicant's rights stemming from the provisions of ST/AI/389 were violated when his PTA was discontinued and the Administration did not make good faith efforts to create a P-2 post for him in order to follow up on his classification appeal.

Whereas the Respondent's principal contentions are:

1. Applicant had no legal right or expectation to be promoted to the Professional level within UNON.
2. Respondent did not abuse his discretion in denying Applicant a promotion to the Professional level within UNON because the condition precedent for granting such a promotion, creation of a post under the established budgetary procedures, could not reasonably be fulfilled.

3. Once Applicant's promotion to the Professional level could not be accommodated, Applicant was no longer entitled to Personal Transitional Allowance.

4. Applicant has been adequately compensated for delays in the consideration of his classification appeal.

The Tribunal, having deliberated from 1 to 25 July 2003, now pronounced the following judgement:

I. The Tribunal begins by enumerating the key dates and events in this case. The Applicant, who had been working in Habitat (UNCHS) since 1984, had held a permanent contract since 1992. In May 1993, a post classification operation was conducted which reduced the previous scale from nine to seven levels. The Applicant, who had been at the GS-9 level before the classification exercise, was classified at the G-7 level. He appealed this decision on 16 December 1993.

II. The various stages in the interminable procedure to which the present Application relates must be briefly recounted here. The Classification Appeals and Review Committee, to which the case was brought in December 1993, acknowledged receipt of the appeal six months later, but did not take a decision until five years later. Not until 2 June 1998 did it rule that the GS-7 post occupied by the Applicant should in fact be placed in the Professional category. The decision was accepted and approved by the Administration, but had yet to be fully implemented.

III. The Applicant was notified of this initial decision of principle three days later, in a memorandum dated 5 June 1998, in which the Administration set out precisely the specific arrangements for the implementation of the change in classification. He was informed that he was to be promoted, subject to certain steps being taken by the Administration:

“... in order to implement this classification decision, by copy of this memorandum, we are requesting the Chief of the Division of Administration at UNON to resubmit to OHRM the subject job description on form P.148 for Professional posts. Once the classification level of the post is determined, the provisions of paragraph 6 of Annex I to ST/AI/389 dated 13 October 1998 may be implemented, i.e., the staff member may be promoted to the Professional category, on an exceptional basis, provided that:

(a) UNON obtains approval for the reclassification of the post from the General Service to the Professional category under the established budgetary procedures;

(b) UNON certifies that the staff member has satisfactorily performed the functions described in the job description for at least three years prior to the implementation date of the classification and that UNON obtains, on these grounds, authorization for the staff member to be considered for promotion to the Professional category without having to take the competitive examination;

(c) Pending approval of the post's classification to the Professional category, the staff member will receive a personal transitional allowance until the date of implementation. Any time served since the implementation of the overall results of the initial exercise will be taken into account for seniority purposes."

IV. This passage repeated the terms of Administrative Instruction ST/AI/389 of 13 October 1993 on "Implementation of the initial General Service classification exercise and the maintenance of the classification system at Nairobi":

"When the incumbent of a post is found to be performing duties belonging to the Professional category, the staff member may be promoted to the Professional category, on an exceptional basis, provided that:

(a) The office concerned obtains approval for the reclassification of the post from the General Service to the Professional category under the established budgetary procedures;

(b) The staff member has satisfactorily performed the functions described in the job description for at least three years prior to the implementation date of the classification and the office concerned obtains, on these grounds, authorization for the incumbent to be considered for promotion to the Professional category without having to take the competitive examination;

(c) Pending the approval, incumbents of posts classified in the Professional category who fulfil these criteria will be placed at the highest General Service level (GS-7) and receive a personal transitional allowance until the date of implementation. Any time served since the implementation of the overall results of the initial exercise will be taken into account for seniority purposes."

V. The Tribunal considers that a number of points emerge clearly from this passage, and that they are crucial to the settlement of the dispute.

VI. On the one hand, it is clear that two steps must be accomplished in order for implementation of the Applicant's reclassification to be completed. The first is finalization of classification in the Professional category, through submission of a job description. The second is promotion of the Applicant to that post. Two conditions must be met for the Applicant to be promoted to the level of his Professional post. First, the Administration must initiate the budgetary procedures necessary to obtain the post corresponding to the classification. Second, the Administration must certify that the staff member in question has a good performance evaluation record, and that his functions have been performed

satisfactorily for at least three years. Since the Applicant was given a permanent appointment in January 1992, by January 1999, he had completed seven years of service in a permanent post. In addition, the fact that the Applicant had always been given good reports was never challenged by the Administration, and should therefore be regarded as established. Hence the second condition was met. Thus, everything depended on the Administration, and it was up to the latter to do what was necessary in order to implement the reclassification decision, in respect of both first and second steps.

VII. On the other hand, the Administrative Instruction recognizes a genuine legal expectation of promotion on the part of the staff in question, since it awards them a PTA until completion of the process. The Tribunal notes that the Administration, by a memorandum of 23 October 1993, confirmed that the Applicant would receive a PTA with effect from 1 May 1993, when his post was classified at the GS-7 level, until the date when the Professional post due him became available. The PTA was indeed paid to the Applicant from the date when his post was classified at the GS-7 level, that is, 1 May 1993, in order to take into account the retroactive effect of reclassification to the P-2 level, and it was paid up to the date of the attempt to terminate his appointment, which will be described below.

VIII. What steps did the Organization take to give effect to the memorandum of 5 June 1998? First, the Tribunal notes that it was not until the fax of 21 October 1999 — 16 months after the decision to classify the post in the Professional category — that the Administration took a first step towards completion of the classification procedure, that is, precise determination of the level at which the post should be classified in the scale of Professional posts. On that date it finally submitted the job description needed to classify the post at the required level in the Professional category. On 5 November 1999, the post was classified at the P-2 level.

IX. Yet one month later, instead of promoting the staff member in question and thereby completing the reclassification process which had been initiated five years earlier, the Administration informed the Applicant that his appointment was being terminated for abolition of post. According to the Respondent, this solution was adopted “in view of the inability to transfer Applicant to another suitable assignment and given the lack of a budgeted Professional level post with which to accommodate Applicant”. By then the Applicant had been working for the United Nations for 15 years, 7 of them with a permanent contract. More precisely, on 6 December 1999,

the Applicant was informed that his termination would take effect three weeks later, on 31 December 1999, and that he was not even being given the statutory three months' notice, as the Organization no longer required his services; he would therefore receive compensation in lieu of notice, as well as the termination indemnity provided for in annex III (a) of the Staff Regulations and Rules. The Tribunal notes that at that date, nothing whatsoever had been done to obtain a P-2 post under established budgetary procedures.

X. The Applicant then filed an appeal with the JAB, and the latter recommended that the Administration suspend action on the termination decision. The Administration then in effect, proposed that, if the Applicant would withdraw his appeal, it in turn would not terminate his contract, but would keep him at the GS-7 level, and discontinue the PTA he had been granted. In other words, the Organization was suggesting that the Applicant should return to square one — generously proposing that at the beginning of the year 2000 he should find himself in the same situation as in 1993, before his post was reclassified to the Professional level — and was also asking him to drop any appeal. The Applicant rejected this arrangement. Yet the Administration implemented it unilaterally, by a decision dated 18 January 2000, under which the Applicant retained his post at the GS-7 level, but received no PTA from 1 January 2000.

XI. This is the decision which is the subject of the present appeal; the Applicant first lodged a request for administrative review on 15 February 2000 and, on 12 May 2000, submitted his case to the JAB, which reported on 6 December 2000.

XII. In its report, which was entirely favourable to the staff member, the JAB considered the interpretation of ST/AI/389. In the first place, it noted that one of the prerequisites for promotion of the Applicant had been met, since “he had been effectively performing functions at a professional level satisfactorily for over three years as required”. In other words, all that was required for the Applicant to be promoted was for the Administration to take action so that the Applicant's legal expectation of promotion, an expectation acknowledged by virtue of the awarding of a PTA, defined as “a transitional payment to the staff member while he is waiting for the conditions for his promotion to be fulfilled”, might be realized.

XIII. On examining the action taken by the Organization, the JAB considered that the Administration had not made the good faith efforts required for the classification to be implemented. In particular, it found that

“the established budgetary procedures envisage requesting for funds when the budget for the next biennium is submitted with appropriate supporting documentation, including in this case the approved classification notice and making a strong case for the creation of the post”.

Yet the Administration had taken no steps in this direction. Furthermore, the Board considered that the Administration had no power to discontinue the PTA. The two complaints are summed up as follows:

“discontinuation of Personal Transitional Allowance has violated the staff member’s rights and ... good faith efforts have not been made to obtain the necessary budgetary approval for the creation of a P-2 post”.

The JAB therefore reached the following conclusions:

“1. The [JAB] recommends that the Personal Transitional Allowance be retroactively reinstated as of 1 January 2000 and that such payment should be continued until a final decision on the budgetary approval for the creation of a P-2 post within UNON for the [Applicant] has been made.

2. The [JAB] further recommends to the Secretary-General that Administration, UNON, be directed to request budgetary approval for the creation of a P-2 post within UNON in regards to the post that the [Applicant] is encumbering. This directive should be implemented immediately, so as to ensure that the request is introduced into UNON’s budget for the biennium 2002-2003. UNON Administration should be further directed to support its budgetary submissions relating to this case with all the necessary supporting documentation.

3. The [JAB] also recommends that, with the above-mentioned appropriate request and submission by UNON, DAS, the Controller should be directed to make appropriate resources available for the creation of a P-2 post, to enable implementation of the [Applicant’s] promotion.”

The report of the JAB was transmitted to the Applicant on 28 June 2001. While the Administration did not accept the Board’s recommendations, it did acknowledge that there had been inexcusable procedural delays and granted the Applicant compensation of three months’ net base salary.

XIV. The Tribunal first recalls article II of the Staff Regulations and Rules, relating to classification of posts and staff, which provides, in regulation 2.1, that

“in conformity with principles laid down by the General Assembly, the Secretary-General shall make appropriate provision for the classification of posts and staff according to the nature of the duties and responsibilities required”.

The Tribunal also recalls, in relation to the application of these prerogatives of the Secretary-General, what it stated in Judgement No. 541, *Ibarria* (1991), which

was based on Judgement No. 396, *Waldegrave* (1987), namely that it cannot substitute its judgement for that of the Secretary-General in job classification matters. What the Tribunal must do is simply consider whether there has been a material error in procedure or substance, or some other significant flaw in the decision complained of (see *Ibarria*, *ibid.*). However, what is in fact at issue here is not a challenge to a classification, but simply a complaint that a classification has not been implemented in accordance with the applicable rules.

XV. In the first place, it is clear to the Tribunal that the Administration did not make the good faith efforts required to implement the Nairobi post classification decision that it had adopted in 1993. The appeal procedure was excessively long. The Classification Appeals and Review Committee did not rule in favour of revising the initial classification until 2 June 1998, that is, almost five years after the appeal was filed, and it was not until 5 November 1999 — six years after the request for a revision of the classification — that the post was finally classified at the P-2 level. This alone would be enough to justify a decision favourable to the staff member.

XVI. But that is not all. The file shows that the Organization never launched the procedure set out in ST/AI/389, once the post had been classified at the correct level, before the JAB adopted its report. No steps were taken to ensure that the transfer of the post from the General Service category to the Professional category was approved in accordance with established budgetary procedures. In that regard, the Tribunal cannot accept the Respondent's argument that the Administration's decision to discontinue the personal transitional allowance "was a proper exercise of the Respondent's discretion, because attempts to obtain budgetary approval within the United Nations Office at Nairobi ... were unsuccessful". Only one attempt was made; the use of the plural "attempts" is therefore improper. Moreover, this step was taken, on 18 January 2000, seven years after the classification and after the attempt to terminate the staff member's appointment. In acting in such a slow, not to say cavalier manner, the Administration certainly failed to comply with Administrative Instruction ST/AI/389, which clearly states that "the initial classification of a post will not negatively affect the existing contractual status, salary or other entitlements of the staff member concerned".

XVII. Since the Administration has cited budgetary factors to explain why it did not implement the Applicant's reclassification, the Tribunal wishes to point out that, even on the assumption that the Administration did exert all necessary efforts to

obtain the budgetary support required for the Applicant's P-2 post, but was unsuccessful, budgetary arguments cannot be considered systematically as excuses for not granting staff members their entitlements. In the *Daly & Opperman* case (Judgement No. 857, 25 November 1997, paras. III and V), the Tribunal clearly indicated the limits of the Administration's discretion in the sphere of post classification:

"The Respondent argues that a recommendation by the Compensation and Classification Service (CCS) that a post be upgraded is not a sufficient condition for its reclassification even when a post at a higher level is available. The appropriate resources must be available before the post is reclassified, pursuant to a classification notice by the CCS. The Tribunal cannot accept this contention. The lack of budgetary funds as a justification for non-implementation of the classification of the Applicants' posts is not acceptable in the light of the special circumstances of this case.

...

The Tribunal must decide whether the Applicants were accorded due process in the determination of their case and whether it is within the Secretary-General's discretion to refuse the Applicants equal pay for equal work and responsibilities at the G-7 level, which the Administration recognized as their appropriate level. The Tribunal believes that while the Secretary-General's discretion is not limited, it must be exercised on a non-discriminatory and non-arbitrary basis. In invoking the budgetary argument as a reason for failing to implement the classification of the Applicants' posts, while implementing the upgrading of 28 other posts, the Administration behaved in an arbitrary manner."

In the same way, in the present case the Organization could not invoke budgetary considerations in order to refuse to classify one post out of the six in question.

XVIII. Secondly, the Tribunal considers that the Administration openly breached the provisions of Administrative Instruction ST/AI/389, which granted the Applicant an entitlement to a personal transitional allowance until such time as his post was reclassified. The Tribunal notes that, by a memorandum to the Applicant dated 5 June 1998, the Administration acknowledged that he was entitled to a PTA. The Administrative Instruction does not state that the Administration may decide to grant a personal transitional allowance, as may be the case in other United Nations documents, such as staff rule 103.11 (b), but that staff members who are classified at the GS-7 level, but whose posts are classified in the Professional category, "will ... receive a personal transitional allowance until the date of implementation". The text does not read "may receive" but "will ... receive". The text does not read "until the

date of implementation, with a maximum of such and such a number of months or years”, but “until the date of implementation”. The Tribunal considers that the text could not be any clearer and that the expressions used are not in the least ambiguous. The Tribunal does not find in this text any leeway which would allow the Administration to discontinue the Applicant’s personal transitional allowance, as it did in January 2000, after having tried to terminate his appointment in order not to have to continue paying him the allowance.

XIX. Thirdly, the Tribunal considers that the Applicant’s chances of promotion were not properly taken into account. It is necessary to answer the Respondent’s argument that the “Applicant had no legal right or expectation to be promoted to the Professional level”. The Tribunal considers that the automatic granting of the personal transitional allowance to a staff member for as long as he or she has not been placed at the level at which his or her post is classified is equivalent to giving the staff member a genuine legal expectation of promotion. If one were to accept the Administration’s argument that the Applicant had neither a right to nor an expectation of promotion, it would be odd for him to be granted such a sum of money as compensation for work performed at a level higher than that which he occupied if his work was not regarded as liable in all likelihood to lead to his promotion.

Indeed, the Organization explicitly recognized elsewhere that the Applicant should have been at the P-2 level, when it notified him in his termination letter of 6 December 1999 that his termination indemnity would be calculated on the basis of his salary at the Professional level, in other words the sum of his salary at the GS-7 level and his personal transitional allowance: “Since you have been receiving Personal Transitional Allowance (PTA) at the P-2 level effective 1 May 1993, your termination indemnity will be calculated on the basis of your salary at the professional level”. How can one consider that the Applicant is entitled to a Professional-level salary and, at the same time, claim that the Administration is not under any obligation as regards promoting him to the Professional level, which would be purely discretionary? The Tribunal therefore considers that, by its action in paying the Applicant a personal transitional allowance from 1 May 1993 to 31 December 1999, and informing him that his termination indemnity would be calculated on the basis of his Professional salary, the Organization did indeed recognize his legal expectation of promotion to the P-2 post from 1 May 1993.

XX. On the basis of the fact that the Applicant should have been promoted to a P-2 post back in 1993, it is not sufficient to consider that his rights will have been respected if he is granted all the entitlements arising from the fact that he should currently occupy a P-2 post. If the Applicant had initially been placed in the post at the correct level, his career might have followed a quite different path. Thus the Applicant complains of “mismanagement of my career”. It should be noted that Information Circular ST/IC/1993/66, on placement and promotion, provides that staff may be considered for promotion after a certain period of time. Where promotion from the P-2 level to the P-3 level is concerned, paragraph 6 of the circular states that:

“The established requirement of minimum seniority in grade for staff in the Professional category and above is as follows:

P-1 to P-2	—	Two years
P-2 to P-3	—	Three years
P-3 to P-4	—	Three years
P-4 to P-5	—	Five years
P-5 to D-1	—	Five years”.

Since the Applicant should have occupied a P-2 post from 1 May 1993 and could, therefore, have been considered for promotion to the next grade from 1 May 1996, the Tribunal considers that he has in fact lost his opportunity to receive such consideration. More specifically, the Tribunal considers that, since the effective date of the classification was 1 May 1993, the Applicant has been deprived of his right to be considered for promotion from the P-2 level to the P-3 level throughout the period running from 1 May 1996 to the present.

XXI. For the foregoing reasons, the Tribunal:

1. Decides that the Administration should resume paying the personal transitional allowance as from 1 January 2000, until such time as the P-2 post becomes available;
2. Urges the Administration to make all efforts in good faith to secure for the Applicant the P-2 post to which he has been entitled since 1993;
3. Considers that the Applicant should be compensated for the inadmissible handling of the classification procedure, which in particular deprived him of his entitlement to promotion, and orders the Respondent to pay to the Applicant one year's net salary at the P-2 level, at the rate in effect on date of the judgement;
4. Rejects all other pleas.

(Signatures)

Julio **Barboza**
President

Omer Yousif **Bireedo**
Member

Brigitte **Stern**
Member

Geneva, 25 July 2003

Maritza **Struyvenberg**
Secretary
