

**Administrative Tribunal**

Distr.: Limited
30 September 2004

Original: English

ADMINISTRATIVE TRIBUNAL

Judgement No. 1184

Case No. 1277: VIDAL

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Kevin Haugh, Vice-President, presiding; Ms. Jacqueline R. Scott;
Mr. Dayendra Sena Wijewardane;

Whereas at the request of Omar Vidal, a former staff member of the United Nations,
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 December 2002;

Whereas, on 15 November 2002, the Applicant filed an Application containing pleas
which read, in part, as follows:

“II: PLEAS

...

8. ... [T]he Applicant respectfully requests the Administrative Tribunal:

- (a) To conduct an oral hearing and invite the [United Nations Environment Programme (UNEP)] Ombudsman as a witness ...
- (b) To request the findings of the investigation into obstruction of justice on the part of UNEP senior management conducted by the Office for Internal Oversight Services (OIOS) that had been requested by the UNEP Ombudsman...

...

10. ... [T]he Applicant most respectfully requests the Administrative Tribunal
to order:

- (a) [That] the Applicant be retroactively reinstated in a post within UNEP commensurate to the level, professional experience and qualifications of the Applicant;
- (b) [That] the Applicant be compensated 12 months' net salary for the damages caused to his career, pension and other entitlements retroactive to 30 April 2002 and until the judgement of the Administrative Tribunal is delivered [with interest];
- (c) [I]n the event that the Applicant is not maintained in a suitable post acceptable to him within UNEP, the Applicant should be awarded damages in the amount of 24 months' net salary ...
- (d) [That] the Applicant be compensated six months' net base salary for the denial of due process ... and various other serious procedural irregularities;
- (e) [That] the Applicant be awarded 12 months' net base salary as compensation for the serious harassment and intimidation he endured ... Pursuant to Article 9 of the Tribunal's Statute, the Administrative Tribunal is respectfully requested to order a larger indemnity than the two years due to exceptional circumstances;
- (f) [That] the Applicant receive an official apology from UNEP ... and a job referral statement ...;
- (g) [That] financial rule 114.1 and staff rule 112.3 be invoked ...”

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 31 March 2003 and twice thereafter until 30 June 2003;

Whereas the Respondent filed his Answer on 30 June 2003;

Whereas the Applicant filed Written Observations on 20 November 2003;

Whereas, on 9 June 2004, the Tribunal requested the Respondent to provide additional documentation and, on 25 June, the Respondent informed the Tribunal that the requested documents did not exist;

Whereas, on 21 June 2004, the Applicant submitted an additional communication and, on 12 July, the Respondent commented thereon;

Whereas, on 2 July 2004, the Tribunal decided not to hold oral proceedings in the case;

Whereas the facts in the case are as follows:

The Applicant joined the UNEP, Nairobi, on a five-month and thirteen days fixed-term appointment as a Programme Officer at the P-4 level, on 18 July 1995. His appointment was subsequently extended several times. On 5 January 1999, the Applicant was reassigned to the Coordination Office of the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities, UNEP, The Hague (hereinafter “the GPA

Office”) and, effective 18 July 2000, he was promoted to the P-5 level, with the title of Deputy Coordinator, GPA.

Pursuant to an Agreement of 24 November 1997 between the Government of the Kingdom of the Netherlands (hereinafter “the Dutch Government”) and UNEP, on the establishment of the GPA Office (hereinafter “Host Agreement”), the GPA Office is hosted by the Dutch Government. The funding of staff of the GPA Office, including the post of the Applicant, was guaranteed in a separate Agreement between UNEP and the Dutch Government, concluded on 16 October 1998 (hereinafter “Funding Agreement”), initially for 14 months and subsequently extended through October 2001.

On 25 August 2000, the GPA Coordinator informed Human Resources Management Services, UNEP, (HRMS), that since the Applicant and another staff member had been paid by a Dutch Trust Fund which was to expire in October 2001, in order to extend their contracts, the Dutch Government would have to clarify the funding situation. She further stated that “the Dutch Government is very willing to consider the extension of the project” under which the Applicant was to be paid until the end of 2002. She informed HRMS that once the financial commitment would be received, the Applicant’s contract could be extended through December 2002.

On 18 September 2000, the Deputy Executive Director, UNEP, addressed a letter to the Deputy Permanent Representative, Permanent Mission of the Kingdom of the Netherlands, Nairobi, reminding him of the Funding Agreement within the framework of the Host Agreement which was concluded for an initial period of five years, i.e., until December 2002. He noted that UNEP’s contracts with the two incumbents were due to expire on 31 December 2000 and that UNEP wanted to extend their contracts until the end of 2002, so that “the termination of their contracts coincides with the termination of the first phase of the Host Agreement”. UNEP therefore requested the Dutch Government to agree to the extension of the project duration to the end of 2002 and that the Applicant’s contract be extended for two more years.

On 3 November 2000, the GPA Coordinator transmitted to the Dutch Government the cost estimates pertaining to the assignments of the Applicant for the period 1 October 2001 up to 31 December 2002.

On 13 December 2000, the Applicant received a letter of appointment, extending his fixed-term contract for one year, through 31 December 2001.

On 2 February 2001, the Applicant requested the Deputy Executive Director, to review the decision to extend his fixed-term appointment for one year instead of two years,

particularly in light of UNEP's communications of September and November 2000, addressed to the Dutch Government.

On 12 February 2001, the Applicant and the three other GPA staff members wrote to the Deputy Executive Director, requesting that the Ombudsman conduct a management review of the GPA Coordination Office. They explained that the current working conditions and atmosphere in the GPA Coordination Office, in particular as they related to the management of the office, should be the object of the Ombudsman's review.

On 9 March 2001, the Applicant and the other staff members reiterated to the Deputy Executive Director their request to have the Ombudsman conduct the management review of the GPA office. On the same day, the Deputy Executive Director informed the Applicant that he would be in The Hague on 21 and 22 March and would like to discuss with the GPA Coordinator, the Applicant and other colleagues, the issues impinging on the work. The Applicant was on a mission assignment away from the office during that visit.

On 24 May 2001, the Applicant was orally informed by the Executive Director, UNEP, that his contract would not be extended beyond 31 December 2001. Having requested the reason for the non-extension, the Applicant was formally informed on 31 May 2001 that his contract would not be extended as the funding for his post would lapse. The Applicant was invited to apply for suitable vacancies in UNEP or, if he wished to leave the Organization, he would be offered a separation package.

On 18 July 2001, the Dutch Government informed UNEP, that it was willing to extend the current financial arrangements through December 2002, on the understanding that UNEP would select two junior programme officers from developing countries (non-UNEP staff members).

On 27 July 2001, the UNEP Ombudsman requested OIOS to conduct an urgent investigation into allegations of "obstruction of justice on the part of UNEP Senior Management" on the basis of Secretary-General's bulletin ST/SGB/273 of 7 September 1994, entitled "Establishment of the Office of Internal Oversight Services". In his letter, the Ombudsman contended that there was a deliberate attempt to impede his enquiry into abuse of authority and other management issues at the GPA office.

On 18 July 2001, the Applicant requested administrative review of the decision not to extend his fixed-term appointment.

Between 30 July and 3 August 2001, the Ombudsman, UNEP, visited the GPA Office and conducted a management review. Subsequently, he issued his report, finding, *inter alia*, that there were obvious signs of attempted replacement of staff by devious means and

that some of these means, if sustained by evidence he was not permitted to seek, could be actionable under the Staff Rules.

In his report, the Ombudsman also addressed the issues surrounding the Applicant and his colleagues recommending that “[s]hould it be established that there was a deliberate attempt to replace existing staff by manipulating either funding levels or job descriptions this would constitute maladministration at best and abuse of authority at worst”.

On 30 September 2001, the Applicant submitted an appeal to the Joint Appeals Board (JAB) in Nairobi, requesting suspension of action on the decision not to renew his fixed-term appointment.

On 18 October 2001, the Applicant lodged an appeal on the merits with the JAB.

On 20 December 2001, the JAB submitted its report on the Applicant’s request for suspension of action. It concluded that the immediate implementation of the contested decision would result in irreparable damage to the Applicant and recommended that action on that decision should be suspended until the Appeal has been decided. On 26 December, the Officer-in-Charge, Department of Management, advised the Applicant that the Secretary-General had accepted the JAB’s recommendation.

On 1 January 2002, the Applicant was reassigned to the Regional Office for Latin America and the Caribbean (ROLAC), Mexico, where he served until his separation from service, on 30 April 2002.

The JAB adopted its report on 22 May 2002. Its considerations, conclusions and recommendations read, in part, as follows:

“Considerations

...

The Panel is of the opinion that the totality of evidence before it justifies the conclusion that the Appellant has indeed been successful in proving that he has been the victim of arbitrary treatment.

... [H]owever, ... [the] Appellant was not successful in proving that the change in funding conditionalities, ... was the result of *male fide* manipulations on behalf of his supervisor, the Coordinator of GPA

...

... [I]t is reasonable to assume that the change in funding conditionalities could just as well have been the result of the expiration of the original funding agreement which was due in October 2001. If that was the case, it can hardly be considered arbitrary if the Appellant’s supervisor accepted that situation, given the deterioration of the working relationship between her and the Appellant and the negative influence it had on the general atmosphere in the office.

...

... [T]he Panel finds fault with the contested decision for the following two reasons.

Firstly, the decision not to extend the Appellant's contract is flawed because considerations entered into the preceding discretionary evaluation, which should not have done so. The Appellant's supervisor clearly and unambiguously stated before the Panel that one of the reasons the staff member's contract was not extended was his insufficient performance.

This ties in squarely with what the Ombudsman has written in his findings ... There he stated that the Coordinator, GPA, made repeated statements of her intention to 'get rid of' individual staff members...

...

... [A]ccording to the Appellant's past Performance Appraisal [System (PAS)] reports his performance has always been satisfactory. ... [I]ssues, which have not been documented in the PAR [Performance Appraisal Report], should not form part of any performance-related decision. ...

Secondly, the Respondent has not given the Appellant the reasonable consideration for alternate employment within UNEP that he deserves.

...

... The Panel concludes that the right to be given every reasonable consideration for alternate posts corresponds to an obligation on the part of the Organization (i.e. UNEP) to make a **diligent search** for existing vacant posts, commensurate to the professional experience and qualifications of the Appellant and taking into account the interests of the Organization.

...

... [T]he staff member still has an active obligation to seek, identify and apply for suitable vacancies.

However, in the particular circumstances of the present case the fruitfulness of such an initiative on the part of the Appellant could be questioned.

It has remained undisputed that, on the occasion of the meeting of 24 May 2001, the Executive Director told the Appellant in no uncertain terms that any further cooperation with him was not desired. This is also corroborated by the fact that the Appellant was offered a separation package should he opt for immediate termination of his contract in May 2001 ...

The efforts exhibited in the Respondent's submissions are at best perfunctory and superficial. ... [T]he Respondent failed to demonstrate to the Panel that he has fulfilled his obligations ... Consequently, the only proper recommendation of the Panel can be to ask him to do so.

Recommendation

In the light of the above considerations the Panel recommends to the Secretary-General that the Respondent make a diligent search for existing vacant posts within UNEP, commensurate to the professional experience and qualifications of the Appellant and taking into account the interests of the Organization.

The Panel further recommends that the Appellant be kept in the employment of UNEP until UNEP has concluded the search to the satisfaction of the Secretary-General.

...”

On 29 April 2002, the Under-Secretary-General for Management transmitted a copy of the JAB report to the Applicant and informed him as follows:

“As the available record amply shows, the sole and independent reason for the decision not to renew your appointment was the absence of funding and not your performance which, until the end of 2000, has been recorded as fully satisfactory. The Secretary-General is therefore convinced that any indication made to the Board that your performance was an additional basis for the contested decision was either made in error and/or was misunderstood. As regards the Board’s finding that you had a right to be considered for further employment, such consideration could only take place in respect of vacant posts that would be suitable to your expertise. As no actual vacancies exist at your level that are commensurate with your area of expertise, the Secretary-General cannot accept the Board’s recommendation.”

On 15 November 2002, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Applicant had a legal expectancy of renewal of his fixed-term contract for a two-year period.
2. The decision not to extend the Applicant’s appointment was vitiated by arbitrariness, prejudice and other extraneous motives.
3. The Respondent did not undertake good faith efforts to place the Applicant in an alternative post.
4. The allegations of inadequate performance were unsubstantiated and vitiated by arbitrariness, causing damage to the Applicant.
5. The actions of senior officials of UNEP constituted abuse of authority and obstruction of justice.

Whereas the Respondent's principal contentions are:

1. The Applicant had no legal expectancy to renewal of his fixed-term appointment.
2. The decision not to renew the Applicant’s fixed-term appointment was not vitiated by extraneous factors.
3. The Applicant did not apply for any other suitable position.

The Tribunal, having deliberated from 2 to 23 July 2004, now pronounces the following Judgement:

I. The Applicant, who had served in UNEP on a fixed-term contract, has appealed to the Tribunal, requesting, *inter alia*, reinstatement in a post commensurate with his level, qualifications and experience and compensation on a variety of grounds, including denial of due process in regard to the renewal of his contract, serious harassment, and procedural irregularities.

The JAB found that the Applicant was indeed the victim of arbitrary treatment. The JAB also found that the renewal of his fixed-term contract was dependant on external funding which, as it turned out, was not forthcoming in the anticipated manner. The non-extension of the Applicant's contract was, however, faulted on two grounds: first, the Applicant's supervisor had justified the decision citing "insufficient performance", and this was incorrect; and second, the Applicant had not been given, as he should have been, reasonable consideration for alternative employment within UNEP.

The Respondent's position is, that any indication to the effect that the Applicant's performance was an issue or a basis for the contested decision, was a misunderstanding or an error; the Applicant's performance had been fully satisfactory and the "sole and independent reason for the decision not to renew" the Applicant's appointment was the "absence of funding". The Respondent further contends that there were "no actual vacancies" at a "level commensurate with [the Applicant's] area of expertise". The JAB's recommendation was therefore not accepted.

II. At the relevant time, the Applicant was serving as the Deputy Coordinator in the the GPA Office, The Hague, on a one-year fixed-term contract at the P-5 level. The Applicant had been encumbering that post since July 2000, having joined UNEP in 1992 and having been promoted to the P-5 level in January 1999. Throughout his tenure with the Organization, the Applicant served on a series of fixed-term contracts.

The last post that the Applicant was encumbering subsisted pursuant to the Host Agreement entered into on 24 November 1997 between the Dutch Government and UNEP. This Agreement related to the establishment of the office of the GPA, which was hosted by the Dutch Government. The staff of the GPA, including the post which the Applicant occupied, were funded by the Dutch Government and guaranteed by a collateral agreement, the Funding Agreement, between the Dutch Government and UNEP. This Agreement was concluded on 16 October 1998, initially for a period of fourteen months and subsequently

extended until the end of October 2001. The continuation of the Applicant's service in this post was linked to the continuation of the funding by the Dutch Government.

In August 2000, UNEP took timely and transparent action to clarify the situation regarding future funding of the Dutch-funded posts, including that of the Applicant. It appears from the file that based on the ongoing communications with the Dutch Government, UNEP's understanding at the time was clearly that the Dutch Government was "very willing to consider the extension of the project". Accordingly, in September 2000, the Deputy Executive Director requested the Dutch Government to continue its provision of the appropriate funding. The Deputy Executive Director specifically pointed out that the Applicant's contract was due to expire at the end of 2000 and that UNEP would like to extend his appointment through 2002, to coincide with the termination of the first phase of the Host Agreement. The progress reports of the Applicant and of another staff member covered by the project were attached to the letter, and the Deputy Executive Director expressed the belief that "the recent progress made in the implementation of the Global Programme of Action [was] to the satisfaction both of the [G]overnment and UNEP". There is no indication in the record that this was in any way questioned by the Dutch Government. In view of this and with the expectation that funds would be forthcoming, on 13 December 2000 the Applicant's contract was extended for an additional year, until 31 December 2001.

However, on 24 May 2001, following a meeting with the Executive Director, which was held in Nairobi and to which the Applicant had been abruptly summoned, he was informed that his contract would not be extended beyond 31 December 2001. This decision was subsequently communicated to the Applicant, in writing, on 31 May, well prior to any response by the Dutch Government to the formal request made by UNEP. The Applicant was also informed that, if he wished to leave the Organization before that date, he would be offered a separation package "as an exceptional measure to assist [him] in developing alternative arrangements." Clearly, in the view of the Administration, the separation that was contemplated was not the ending of a fixed-term contract through the normal effluxion of time, but separation for cause.

III. The Tribunal does not find it necessary to detail the events which led to the non-renewal decision, except to remark that, commencing in January/February 2001, the attitude of UNEP, particularly the GPA Office in The Hague, towards the Applicant, began to undergo a significant change. Serious difficulties had appeared in the management of that office, which engulfed not only the Applicant but three other staff members. There was seething discontent with the management of the Office in The Hague and the working environment had

been reduced to a most regrettable and undesirable state. These difficulties are fully documented in the record, which includes a balanced, comprehensive and most useful written testimony, prepared by the then Ombudsman, who performed his duties with dedication to the Terms of Reference entrusted to him, despite the obstacles which the UNEP management placed in his way. The Tribunal commends the independence and professionalism with which the Ombudsman acted in a very difficult situation.

The Tribunal believes that its own task and that of the JAB would have been even further facilitated by his work, had it not been for the constraints placed on the Ombudsman. In this context, the Tribunal finds it rather strange that, the OIOS, having on 27 July 2001 been requested by the Ombudsman to conduct an investigation into “allegations of obstruction of justice on the part of UNEP senior management”, did not conduct any investigation into the matter. In response to a request by the Tribunal, the Respondent claimed that OIOS did not investigate the matter “as [the Applicant] had at the time engaged, or was about to engage, other United Nations jurisdictions such as the JAB”. The Tribunal notes that, this investigation was not requested by the Applicant and it was to have covered a much broader scope than the Applicant’s problems, and therefore the explanation provided by the Respondent is disingenuous.

The Tribunal also notes that the management of UNEP did nothing to deal effectively with the discontent expressed by the staff of GPA, except to steer the Applicant (and apparently other professional staff members) out of the Organization. The valuable contribution of the Ombudsman, which was available to the Administration for several months prior to the actual separation of the Applicant, was considered irrelevant and was put aside.

IV. The JAB expressed its opinion regarding the non-extension of the Applicant’s contract in the following words: “the totality of the evidence before it justifies the conclusion that [the Applicant] had indeed been successful in proving that he has been the victim of arbitrary treatment.” Having carefully reviewed the file, the Tribunal fully endorses this conclusion. Indeed, the totality of the evidence in this case establishes an overwhelming case of harassment, arbitrariness, discrimination and victimization of a staff member. The evidence raises serious doubts in the Tribunal as to the *bona fides* of the Administration in relation to the Applicant. Unlike the JAB, the Tribunal is not inclined to see the circumstantial evidence as regards the convenient change in the “funding conditionalities”, which were suddenly introduced in the Dutch Government’s letter of 18 July 2001, as bereft of influence on the part of a designing management. The Tribunal notes the time sequence of

the correspondence between the parties and that the letter in question, informing of the Dutch Government's decision concerning the conditions placed on its funding the posts, had not been received by UNEP when the Applicant was notified that his contract, which was dependant on this funding, would not be extended beyond 31 December 2001. The Tribunal further notes that the contacts with the Dutch Government, on this subject, had been ongoing and that, whilst the Dutch Government decided that its funding of the project would continue, new conditions had been introduced. These added conditions, in effect, served expressly to exclude the Applicant (and another staff member), although earlier expectations seemed to clearly indicate that both parties to the Funding Agreement had been satisfied with the progress of the project and expected it to be continued, in the absence of any change in the programme requirements. Added to this is the fact that UNEP did not question the Dutch Government as to the reason for such a change, considering that the level of funding continued to be the same, nor was any possible explanation for the change provided. The Tribunal does not question in any way the absolute prerogative of the Dutch Government to place any conditions it may decide on with regard to funding. Nonetheless, the Tribunal is also of the view that, in the absence of any clarification, which it was reasonable for UNEP to have sought, the facts establish a lack of transparency on the part of the Organization and fortify the Tribunal's conclusion, that the true reasons for the non-extension of the Applicant's contract were extraneous to the one advanced by the Respondent. Moreover, the Tribunal is of the view that the totality of the circumstances in the present case could reasonably have created an expectation on the part of the Applicant that he would continue to serve until the end of 2002, coinciding with the conclusion of the first phase of the Host Agreement.

V. Whilst the Respondent did eventually accept that the Applicant's performance was not in issue, the Tribunal views the manner in which this whole aspect was handled as a further indication of the lack of good faith, embarrassment and discomfort on the part of the Respondent. In the Administration's final letter to the Applicant, dated 29 April 2002, the Administration was reduced to explaining away the reliance on performance as a ground for the separation by rather tamely categorizing it as "either made in error and/or was misunderstood" and accepting that the Applicant's performance was, until "the end of 2000", recorded as "fully satisfactory". This was, rightly, worded carefully, because, upon inspection of his Official Status file, after his Application to the Tribunal had been filed, the Applicant discovered a document, purporting to be a PAS for the period January through December 2001. This document was apparently prepared after the Applicant had left the service of

UNEP, despite his having repeatedly requested, prior to his separation, that a PAS for the last period of his service be prepared. This document was not communicated to the Applicant and he strenuously counters its validity as based on a serious misstatement of facts and as procedurally irregular. In the putative PAS, the Applicant is marked as “not meeting performance expectations” and his behaviour is described as “increasingly obstructive”. The Tribunal finds this to be a clear violation of the PAS guidelines, depriving the Applicant not only of his right to know about such a document, but also of his right to defend himself against the contents thereof and of the possibility of rebutting it.

The Tribunal also notes that the GPA Coordinator was charged with having repeatedly made statements regarding her intention to “get rid of” individual staff members, an allegation which the Ombudsman upheld as having been confirmed by a number of persons, as follows:

“It was alleged that the Coordinator made repeated statements of her intention to ‘get rid of’ individual staff members [i.e., replace them].

Findings

The allegation is upheld. Such statements were confirmed by a number of Respondents. It must be stated that a manager has the right, even responsibility, to replace unproductive staff. But such replacement of staff should be a consequence of properly documented poor performance or changed programmatic requirements and must not be an objective in itself. Another legitimate reason for the replacement of staff could be a change in funding levels, thus requiring downsizing in an area of less importance than other areas. In the incidents brought to the Ombudsman's attention it was clear that poor performance had not been documented in [the PAS] reports, nor had the programme requirements of the GPA been changed, neither had the levels of funding changed for the period under consideration.”

The Ombudsman also claimed that “there were obvious signs of attempted replacement of staff by devious means”. The Tribunal has no reason to disagree with these findings of the Ombudsman and finds a clear lack of transparency in dealing with the Applicant.

Furthermore, the Tribunal notes that, in its report, the JAB stated that the Applicant's supervisor “clearly and unambiguously stated before the Panel that one of the reasons the staff member's contract was not extended was his insufficient performance”. As the JAB rightly pointed out, this “ties in squarely with what the Ombudsman has written in his findings”.

VI. The Tribunal is mindful that the Applicant was serving on a fixed-term contract which does not carry an expectancy of renewal and that his good performance would not entitle him to an extension of his contract. (See Judgements No. 440, *Shankar* (1989); and,

No. 1084, *Sabbatini* (2002).) The Tribunal has also held that the Administration is not required to provide reasons for its decision, but that if a reason is given, it has to be borne out by the facts. (See Judgement No. 1003, *Shasha'a* (2001).)

The Tribunal concludes that, in the present case, the Applicant's separation from UNEP was not due to the reasons advanced by the Administration. It was a separation for wrongly motivated extraneous reasons. The Tribunal finds that the Applicant had an expectancy for the renewal of his contract until 31 December 2002. Compensation is due for that, as well as for the arbitrary treatment and victimization to which the Applicant was subjected.

VII. The Tribunal notes that the Applicant had served on a series of fixed-term contracts for nearly a decade (under the 100 series) and that following the decision by the Dutch Government, which resulted in the non-renewal of the Applicant's appointment in that post, the Respondent did not make any attempt to demonstrate that the Applicant had been seriously considered for any suitable alternative employment with UNEP. In fact, the evidence indicates to the contrary. For example, the Respondent refused the request from the Director of UNEP/ROLAC, where the Applicant had been serving temporarily, to extend the Applicant's appointment there. Furthermore, contrary to the Respondent's assertion that there were no suitable alternative posts, the Applicant had demonstrated that such posts were available. The Respondent contends that it was up to the Applicant to apply for jobs, and that he failed to do so. In this context, the Tribunal wishes to reiterate the JAB's determination, as follows:

"It has remained undisputed that, on the occasion of the meeting of 24 May 2001, the Executive Director told the Appellant in no uncertain terms that any further cooperation with him was not desired. This is also corroborated by the fact that the Appellant was offered a separation package should he opt for immediate termination of his contract in May 2001. ... To expect the Appellant to apply for positions under such circumstances would be a mere formality. In such circumstances the onus to act must lie with the Organization and not with the Appellant.

The efforts exhibited in the Respondent's submissions are at best perfunctory and superficial. ..."

The Tribunal agrees with these conclusions.

VIII. In view of the foregoing, the Tribunal:

1. Orders that the Applicant be paid eight months' net base salary (one year less four months that he had actually served during 2002), paid at the rate in effect at the date of this Judgement;

2. Orders that the impugned PAS, covering the year 2001, be removed from the Applicant's Official Status file;

3. Orders that the Applicant be paid 12 months' net base salary, paid at the rate in effect at the date of this Judgement, as compensation for the numerous violations of his rights; and,

4. Rejects all other pleas.

(Signatures)

Kevin Haugh
Vice-President, presiding

Jacqueline R. Scott
Member

Dayendra Sena Wijewardane
Member

Geneva, 23 July 2004

Maritza Struyvenberg
Executive Secretary