



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1277

Case No. 1360

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Kevin Haugh, Vice-President, presiding; Mr. Dayendra Sena Wijewardane; Mr. Goh Joon Seng;

Whereas at the request of a former staff member of the United Nations Environment Programme (hereinafter referred to as UNEP), the President of the Tribunal, with the agreement of the Respondent, extended to 30 March 2004 the time limit for the filing of an application with the Tribunal;

Whereas, on 30 March 2004, the Applicant filed an Application containing pleas which read, in part, as follows:

“Pleas

...

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

...

b. to confirm the findings of the Geneva Panel on Discrimination and Other Grievances;

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

a. that the Applicant be paid salaries and benefits to which he would have been entitled from 1 August 2001 to 31 December 2003, i.e. the remaining period of the four-year extension of the contract to which he was entitled as per the revised policy ...;

- b. that the Applicant be paid compensation for the violation of [his] rights as per the findings and recommendations of the Geneva Panel on Discrimination and Other Grievances, and in particular for the lack of the Respondent's concrete action with respect to this report."

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 30 August 2004 and once thereafter until 30 September;

Whereas the Respondent filed his Answer on 29 October 2004;

Whereas the Applicant filed Written Observations on 2 June 2005;

Whereas the statement of facts, including the employment record, contained in the report of the Joint Appeals Board (JAB) reads, in part, as follows:

"[Applicant's] Professional Record

[In 1990, the Applicant was seconded to UNEP from IBM, working as Senior Adviser at the P-5 level in the field of Capacity Building, Environmental Information Management.]

... [On 5 January 1994, the Applicant became a staff member] as a Programme Officer (Systems Analyst), on a one-year fixed-term appointment, at the P-4 level. His appointments were renewed on a yearly basis. ...

... Effective 16 January 1998, the [Applicant] was appointed Head, Capacity Building Unit, [UNEP/Convention on International Trade in Endangered Species (CITES)], in Geneva, at the P-4 ... level, on [a] ... fixed-term appointment.

... His appointments were renewed twice for one year in January 1999 and January 2000 and retroactively for two months in February 2001. He was effectively separated from the Organization on 28 February 2001.

... From 1994 to 1996, the [Applicant's] performance was considered very good. For the periods covering 1 April 1997 to 30 March 1998 and 1 April 1998 to 31 December 1998, the [Applicant] was considered as fully meeting performance expectations.

...

Summary of Facts

... On 31 May 1999, the Deputy Executive Director, UNEP, ... addressed a memorandum to all UNEP staff informing them [of] the revised policy on initial appointment, extensions and reinstatement/reappointment. ...

... In mid-1999, the [Applicant's] post of Chief, Capacity Building Unit, CITES was reclassified from P-4 to P-5 ...

...

... By e-mail dated 25 October 1999 addressed to the [Applicant's] supervisor, the Office of the Deputy Executive Director, UNEP, [recalling the revised policy referred to above] asked him [for] clarification regarding his recommendation to extend the [Applicant's] appointment for one-year ...

... By e-mail dated 26 October 1999, the supervisor explained that since the [Applicant's] post had been reclassified [at] the P-5 level and requested for advertising, [the recommendation was] for a 12 month extension, in order not to pre-empt the outcome of interviews [of potential candidates.] He added that a 12 month extension would bring the [Applicant's] appointment in the same time-line as all other professional staff in the Secretariat. [He also stated that the Applicant was not entitled to promotion as he had not carried out the functions of Chief, at the P-4 level, for three years.]

... By memorandum dated 7 November 1999, the supervisor wrote to the [Applicant, stating, inter alia, that 'it would be difficult for [the Applicant] to win the P-5 appointment, based on [the Applicant's] current poor performance record'.]

... By memorandum dated 19 November 1999, the [Applicant] requested his supervisor to 'review the extension of [his] contract in line with [the] revised policy for extensions'.

... By memorandum dated 23 November 1999, the [Applicant's] supervisor replied ... While reiterating the two reasons for which his appointment had been extended for one year only ... he added that management had been required to bring professional staff contracts in line with the current budget cycle for the Secretariat.

...

... On 15 February 2000, the [Applicant] signed his 1999 [Performance Appraisal System report (PAS)] ... with the rating 'does not meet performance expectations' and initiated a rebuttal ...

...

... In February 2000, the [Applicant] applied to the reclassified P-5 post of Chief, Capacity Building Unit, CITES, as the incumbent of the post.

...

... By memorandum dated 8 May 2000, the [Applicant] brought to the Deputy Executive Director's attention the importance of having his PAS rebuttal dealt with in a timely manner, in view of his application to the reclassified P-5 post of Chief, Capacity Building Unit, CITES.

...

... By letter dated 21 September 2000, the Secretary-General, CITES, informed the [Applicant] that his contract would not be renewed after its expiration on 31 December 2000. [According to the Applicant, he subsequently met with the CITES Secretary-General, and requested that he be kept against one of two available P-4 posts. In response he was informed that this would not be appropriate, as the states parties to CITES would be confused due to the fact that he had been the Chief of the Unit and now he would be only a unit staff member.]

...

... On 31 October 2000, the [Applicant] met with the Deputy Executive Director, UNEP, who allegedly promised to extend his contract for six-months, from January 2001 to July 2001.

... [During] January/February 2001, the [Applicant] continued working without [a] contract.

... By letter dated 7 February 2001, the [Applicant] was advised that he had not been selected for the reclassified post ...

... By memorandum dated 8 February 2001, the Director, Regional Office for Europe, ... and Deputy-Director, Division of Environmental Conventions ... wrote to the Executive Director, UNEP, in order to propose an arrangement for a six-month temporary post for the [Applicant], 'given the commitments already made, and the fact that [the Applicant] has already been working on his new assignment since the beginning of January ...'

... By e-mail dated 27 February 2001 ... [Human Resources Management Services (HRMS)] ... confirmed to the [Applicant] that approval had been received to extend his contract [only] for two months from 1 January to 28 February 2001. ...

... By letter dated 28 February 2001, the [Applicant requested] the Secretary-General ... to ... review [the following administrative decisions: i. the decision not to renew his fixed-term appointment; ii. the decision to grant him only a two-month contract despite the fact that he had been promised a six-month contract; and, iii. the decision not to select him to the reclassified post of Chief, Capacity Building, CITES.]

...

... In March 2001, the [Applicant] contacted the Panel on Discrimination and Other Grievances requesting it to investigate what he considered to be constant harassment by his direct supervisor ...

... By memorandum dated 29 March 2001, the [Applicant] received [a] copy of the report of the Rebuttal Panel. The Panel concluded that the professional competence of the [Applicant] was not in doubt ... and found 'intriguing that his performance fell to such a low level (without warning) within one reporting period'. The Panel considered that the PAS rating as made by the supervisors was unwarranted and should be upgraded to a rating of 3.

...

... [On] 31 October 2001, the [Applicant lodged] his appeal [with] the Geneva JAB ...

... By memorandum dated 6 December 2001, the Panel on Discrimination and Other Grievances at Geneva communicated its report to the parties concerned. It concluded in particular that the [Applicant] was 'treated in a discriminatory and unfair manner which affected his contractual status and compromised his career as a whole, placing him in a precarious situation'."

The JAB adopted its report on 28 March 2003. Its considerations, conclusions and recommendations read, in part, as follows:

“Considerations

...

Merits

...

69. While it considered itself incompetent to review the allegations of harassment put forward by the Appellant, the Panel nevertheless wished to address one specific question raised by the Appellant, i.e. the fact that in October 1999, his supervisor recommended his contract extension for one year only whereas the Appellant sustains that, pursuant to the UNEP revised policy on initial appointment, extensions and reinstatement/reappointment, ‘he was entitled to a four-year extension of his fixed term contract for he had completed more than four years of service at UNEP and had a good record of performance’.

...

71. While agreeing that the Appellant could have met the conditions for a four-year extension according to the revised policy, the Panel however noted that the four-year extension was not automatic. ... [T]he Panel stressed that there is no entitlement for staff members to a four-year extension; there is only a possibility that appointments be extended for four years subject to the requirement of the programme. ...

72. Moreover, the Panel ... found that the contracts of other professional staff members had not been renewed for four years either and that indeed there was a trend to have all contracts ending on 31 December 2000 ... The Panel thus considered that in aligning the Appellant’s contract with other professional staff members, UNEP did not violate the Appellant’s rights.

...

74. The Panel noted that a meeting took place between the Appellant and UNEP Deputy Executive Director on 31 October 2000 but it could not find any element that would tend to show that an objective reason [for the non-renewal of his fixed-term appointment] was given to the Appellant during this meeting.

75. On top of that, the Panel’s attention was drawn to the Respondent’s statement that ‘the decision of the Secretary-General not to extend the fixed-term appointment was based on the fact that his P-4 post had been abolished following 31 December 2000, not on bad performance’. ... The Panel ... recalled the jurisprudence of the Administrative Tribunal [which] has repeatedly stated that in cases of abolition, the Administration must undertake good faith efforts to place the staff member in question in an alternative post ... In the present case, the Panel could not find any indication that [such] efforts had been made by UNEP ...

...

78. ... [T]he Panel considered that there were strong indications that a promise was made, even if this promise allegedly made by the Deputy Executive Director on 31 October 2000 cannot be materially proven. In particular, the Panel underlined the fact that the Appellant was effectively allowed to continue working during the months of January and February 2001. Based on the memorandum dated 8 February 2001 ... the Panel further considered that there was enough documentary evidence to substantiate that the Appellant was working on a six-month project. ... In view of the above, the Panel found that the Appellant had a reasonable expectation that his contract would be extended for six months.

79. Finally, the Panel ... went on to examine the Appellant's claim that his non selection to the reclassified P-5 post in favour of a less qualified candidate was based on a flawed evaluation report and that his candidature was not fairly and objectively considered.

...

83. ... [T]he Panel's attention was drawn to the fact that UNEP Administration did not await the outcome of the Appellant's 1999 PAS rebuttal to submit for review the candidates for the reclassified post. The Panel also noted that the Appellant initiated his rebuttal in February 2000 and that he was provided with a copy of the rebuttal Panel's report on 29 March 2001. ...

....

85. ... [T]he Panel could not but observe the failure of UNEP Administration to fulfil its responsibility for the timely handling of the rebuttal and to respect the Appellant's due process rights. Moreover, taking into account the conclusions of the Rebuttal Panel, which upgraded the Appellant's performance from 5 ("does not meet performance expectations") to a rating of 3 ("fully meets performance expectations"), the Panel found that the Appellant's candidacy to the reclassified post might have been directly prejudiced by the undue delay in the rebuttal process.

Conclusions and Recommendations

86. Taking into account the overall circumstances surrounding the case, the Panel **concludes** that:

- a. the decision not to renew the Appellant's fixed-term appointment after its expiration date was tainted by procedural irregularities since the Appellant had not been offered any reason for that decision and since the decision had been retroactively justified by an improper motive. In addition, the non-renewal of the Appellant's appointment being the consequence of a reclassification exercise, the Panel established that the Administration did not fulfil its obligation to seek another suitable post for the Appellant. The Panel found however that the Appellant had no entitlement to a four-year extension of his appointment pursuant to UNEP revised policy on initial appointment, extensions and reinstatement/reappointment;
- b. the commitment of the Administration to grant the Appellant a six-month fixed-term appointment had not been honoured and had indeed generated a legitimate expectation for continued employment until June 2001 in favour of the Appellant;

c. the undue delay in the rebuttal process constituted a procedural flaw, which violated the Appellant's right to a fair treatment in the promotion procedure and prevented his candidature from being duly and fairly considered.

87. ... [T]he Panel **recommends**, as compensation for the injury sustained ... the payment of four month's net base salary and entitlements (dependency allowance and education grant) for the period 1 March 2001 to 31 June 2001 payable at the rate in effect on the date of his separation from service.

88. In addition, the Panel **recommends** that the Appellant be compensated for the overall procedural irregularities that occurred and for the failure of the administration to fulfil its obligations towards the Appellant. The amount of the compensation should be equal to eight month's net base salary payable at the rate in effect on the date of his separation from service."

On 20 August 2003, the Under-Secretary-General for Management transmitted a copy of the JAB report to the Applicant and informed him as follows:

"The Secretary-General, emphasizing that according to the consistent jurisprudence of the Administrative Tribunal, the Administration may decide not to renew or extend a contract without having to justify its decision, but that once a justification is given, it must be consistent with the evidence, accepts the first recommendation of the Board. The Secretary-General also accepts the second recommendation of the Board, based on its reasoned conclusions. He has therefore decided to pay you four months' ... net base salary and entitlements (dependency allowances and education grant) for the period 1 March 2001 to 30 June 2001, and eight months' net base salary at the rate in effect on the date of your separation."

On 30 March 2004, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. Pursuant to the revised policy on initial appointment, extensions and reinstatement/reappointment, the Applicant, having met the requirements stated therein, was entitled to a four-year extension of his fixed-term contract. The reasons given by his supervisor for granting him only a one-year extension constitute additional conditions not contained in the said revised policy.

2. The JAB erred in not considering the Applicant's harassment claim, for at the time it considered the Applicant's appeal, the report of the Geneva Panel on Discrimination and Other Grievance confirming the Applicant's harassment claim had been out for approximately 15 months without any concrete action taken by the Respondent. Additionally, while not listed under the administrative decisions that he

requested the Secretary-General to review, the Applicant did include in his request for administrative review the issue of harassment by his supervisor.

3. The fact that a reclassification process affected the Applicant's contractual status constitutes a violation of administrative instruction ST/AI/1998/9 of 6 October 1998 entitled "System for the classification of posts". The extension of the Applicant's contract should not have been linked to the reclassification and advertisement of the post.

4. The Respondent violated the Applicant's due process rights.

Whereas the Respondent's principal contentions are:

1. The Applicant was not entitled to a four-year extension of his appointment.

2. The Panel on Discrimination and Other Grievances is an informal mechanism for dispute resolution. The Applicant's grievances have now been addressed through the formal appeals process.

3. The Applicant's "harassment claim" is not properly before the Tribunal.

4. The Applicant was adequately compensated for any irregularities in his case.

The Tribunal, having deliberated from 3 to 23 November 2005, now pronounces the following Judgement:

I. The Applicant has filed an Application requesting the Tribunal to find that he was entitled to a four-year extension of his fixed-term appointment and to order compensation for violation of his rights of due process and for the harassment he claims to have suffered.

II. The facts pertinent to this case may be summarized as follows:

In 1990, the Applicant was seconded from IBM to UNEP and, in 1994, he joined UNEP as a staff member on a one-year fixed-term appointment at the P-4 level. He was subsequently employed on successive fixed-term appointments and, effective 16 January 1998, he was appointed to the post of Head, Capacity Building Unit, CITES. His PAS reports until 1999 all rated his performance as fully meeting expectations.

On 31 May 1999, UNEP informed all its staff members of the “revised policy on initial appointment, extensions and reinstatement/reappointment”. This revised policy stated, inter alia, that if staff members met performance expectations and had completed four years of service, then, subject to the requirements of the programme, their appointment may be extended up to four years at a time.

In mid-1999, the Applicant’s post was reclassified from the P-4 to the P-5 level. The Applicant later applied for it as the incumbent of the post, but was not selected.

Towards the end of 1999, the Applicant’s supervisor recommended that the Applicant’s contract be extended by one year. The Applicant’s supervisor explained that, since the Applicant’s post had been reclassified at the P-5 level, in order not to pre-empt the outcome of interviews of potential candidates, the recommendation was for a one-year extension. He added that a one-year extension would bring the Applicant’s appointment to the same time-line as all other professional staff in the Secretariat. He also stated that the Applicant was not entitled to promotion as he had not carried out the functions of Chief for three years.

In February 2000, the Applicant’s PAS for the year 1999 was completed. His performance was rated as “does not meet performance expectations”. The Applicant rebutted this PAS and, after a delay of more than a year, the rebuttal panel recommended that it be upgraded to “fully meets performance expectations”.

On 21 September 2000, the Applicant was informed that his contract would not be renewed beyond its expiration date of 31 December 2000. The Applicant claims – and it is not refuted by the Respondent – that he subsequently met with the Secretary-General of CITES and requested that he be kept against one of two available P-4 posts. In response, he was informed that this would not be appropriate, as the states parties to CITES would be confused due to the fact that he had been the Chief of the Unit and now he would be only a unit staff member.

In October 2000, the Applicant met with the Deputy Executive Director, UNEP, who allegedly promised to extend his contract for six months. During January and February 2001, the Applicant continued working without a contract. He did eventually receive a contract retroactively covering these two months.

III. The Tribunal notes the JAB’s findings, that the decision not to renew the Applicant’s contract was tainted by procedural irregularities, but that he did not have an entitlement to a four-year extension. The JAB also determined that the

Administration did not fulfil its obligation to seek alternative suitable employment for the Applicant; that there was a commitment for a six-month appointment, which commitment was not honoured; and, that the delays in the rebuttal process violated the Applicant's rights to fair treatment and prevented the full and fair consideration of his candidature to the P-5 post. The JAB recommended that the Applicant be awarded compensation equivalent to four months' net base salary and entitlements (to complete the six months which he had been promised) and an additional compensation of eight months' net base salary for irregularities and for the Administration's failure to fulfil its obligations to the Applicant. The Tribunal also notes that the Respondent accepted these recommendations.

In light of the above as well as the Applicant's pleas, the Tribunal considers that the issues which it must consider in the present case are limited to the Applicant's claim for entitlement to a four-year extension of his contract and to his claim for compensation for the harassment he was subjected to.

IV. The Tribunal will first address the Applicant's contention that, having met the requirements of UNEP's revised policy, he was entitled to a four-year extension of his appointment.

The Tribunal is cognizant of the fact that the Applicant was serving under a fixed-term appointment which, in accordance with staff rule 104.12 (b) (ii) "does not carry any expectancy of renewal or of conversion to any other type of appointment" and which, in accordance with staff rule 109.7 (a) expires automatically on its expiration date. However, the Tribunal has previously held that, while normally there is no legal expectancy for renewal of such appointments, expectancy may, in some cases, be deduced from the totality of the circumstances surrounding the case. In Judgement No. 885, *Handelsman* (1998) the Tribunal stated:

"unless there exist countervailing circumstances ... staff members may see their relationship with the Organization terminated when the last of their [fixed-term] appointments expires. Countervailing circumstances may include (1) an abuse of discretion in not extending the appointment, or (2) an express promise by the Administration that gives a staff member an expectancy that his or her appointment will be extended. The Respondent's exercise of his discretionary power in not extending a [fixed-term] contract must not be tainted by forms of abuse of power such as violation of the principle of good faith in dealing with staff, prejudice or arbitrariness or other extraneous factors that may flaw his decision." (See also Judgements No. 1052, *Bonder* (2002); No. 1057, *Da Silva* (2002); and, No. 1177, *van Eeden* (2004).)

Having reviewed the present case, the Tribunal is of the view that countervailing circumstances did indeed exist in the Applicant's case and that he did have an expectancy to have his contract renewed for four years.

The memorandum of 31 May 1999, outlining UNEP's revised policy on the above issue states, in relevant part, as follows:

“Extensions

The appointments of staff members who *fully meet the performance expectations* (as reflected in their PASSs) may be extended, subject to the requirements of the programme:

- Two years after initial appointment
- Four years after the first extension.

Based on the same criteria, the appointments of staff members who have completed four years of service with UNEP may be extended up to four years at a time.

...”

The memorandum thus confers on the Secretary-General a discretion to grant a four-year extension subject to satisfactory performance and to the requirements of the programme. As in all cases of discretionary authority, the exercise thereof must be without abusing these powers. (See Judgements No. 870, *Choudhury and Ramchandani* (1998) and *Handelsman* (*ibid.*).)

It is not in dispute that the Applicant's performance was satisfactory; the issue is whether the requirements of the programme were such that they precluded the Applicant from being granted the four-year contract, as per the revised policy. The Tribunal is of the view that the JAB erred in so determining. In reaching this conclusion, the Tribunal considered that, since the programme had two vacant P-4 posts, it was within the requirements of the programme that these posts be filled. The Applicant was willing and, in fact, requested to be placed against one of these P-4 posts, but unfortunately, the Respondent denied his request. The reason for this denial is a rather puzzling one – on the one hand, the Applicant was found to be unsuitable for the post he had been encumbering prior to its reclassification at the P-5 level; while, on the other hand, it was deemed inappropriate for him to be placed against a post at his level (P-4), as he had been the Chief of the Unit and now he would be only a unit staff member. Moreover, the Tribunal finds that the JAB based its conclusion in this regard on mistaken grounds, such as “the trend to have all contracts end on 31 December

2000”, which grounds were not part of the requirements of the revised policy and were thus irrelevant and should not have been considered by the JAB.

Having determined that the Applicant met the requirements as stipulated in UNEP’s revised policy and that there was a programme requirement for at least two P-4 staff members, neither of which the Applicant was considered for, the Tribunal finds that the Applicant had a legal expectancy for a four-year contract. The Tribunal so concludes based on its interpretation of the revised policy and its conviction that, had the Respondent’s discretion been properly exercised, he would have granted the Applicant a four-year extension. The Tribunal is of the view that, on a proper construction of the revised policy, it was intended that a staff member who met the requirements set therein would ordinarily be granted the four-year extension. In such cases, if the Respondent fails to afford this extension, he must provide adequate and sound reasons for so deciding. In a previous Judgement (Judgement No. 1127, *Abu-Ras* (2003)), which also involved the interpretation of the word “may”, the Tribunal held as follows:

“The Applicant submits that the use of the word ‘may’ rather than using ‘shall’... suggests that the Administration is vested with a discretion ... Whilst ‘*may*’ is indeed sometimes used to denote the existence of discretion, it is also sometimes used as meaning ‘*must*’. In its negative form ‘*may not*’ is almost inevitably used to connote an absolute prohibition rather than implying the issue is subject to the exercise of a discretion. ...

... the Tribunal is satisfied that ... [if] it had been intended to be a discretionary ‘may’, no doubt the Administrative Instruction would have at least outlined the matters to be taken into account in the exercise of the discretion, rather than to leave the Administration at large.”

In following *Abu-Ras*, the requirements outlined in the revised policy would have been the “matters to be taken into account” in the exercise of the Respondent’s discretion and, when properly taken into account and deemed to be fulfilled, would lead to the granting of the relevant benefit, i.e. the granting of a four-year extension of contract, unless a reasoned explanation could be offered for not doing so. No such explanation has been advanced in this case. The Applicant was not granted same and is therefore entitled to compensation. The Tribunal, however, does not believe that this warrants four years’ compensation, as the Applicant claims.

V. The Tribunal will next address the Applicant’s “harassment claim”. The Tribunal agrees with the Applicant that this claim was properly within the jurisdiction

of the JAB and that the JAB's failure to deal with this claim constitutes a denial of the Applicant's due process rights. Since the JAB did not consider this claim, its recommendation of eight months' compensation for irregularities obviously did not include compensation for harassment.

The Tribunal is of the view that the Applicant was, indeed, subjected to harassment and discrimination. In reaching this conclusion, the Tribunal considered, inter alia, the very detailed report of the Panel on Discrimination and Other Grievances, whose findings included a determination regarding the behaviour of the Applicant's supervisor towards him, stating that "there exist certain elements ... which indicate a sort of abuse of position and a continuous pattern of pressure and destabilization." The Tribunal notes that the Panel on Discrimination concluded, inter alia, as follows:

"The [Applicant's] complaint is well founded...;

...

[The Applicant] was treated in a discriminatory and unfair manner which affected his contractual status and compromised his career as a whole, placing him in a precarious situation;

..."

Additionally, the Tribunal considered its previous Judgement No. 1060, *Baddad* (2003), quoting the ILO Administrative Tribunal Judgement No. 495, *in re Olivares Silva* (1982), which recognized that

"the first and greatest safeguard against the operation of prejudice lies in the procedural requirements which every set of staff regulations contains and whose main objective is to exclude improper influence from an administrative decision. ... [P]roof of prejudice is rendered unnecessary when procedural requirements have not been observed."

The JAB had established and the Respondent had accepted that there were significant procedural irregularities in the Applicant's case. Having considered the above and the entire file, the Tribunal is of the view that the Applicant is entitled to additional compensation for the harassment and discrimination he suffered.

VI. In view of the foregoing, the Tribunal:

1. Orders that the Applicant be paid additional compensation equivalent to one year's net base salary at the rate in effect on the date of this

Judgement, with interest payable at eight per cent per annum as from 90 days from the date of distribution of this Judgement until payment is effected; and

2. Rejects all other pleas.

(Signatures)

Kevin Haugh
Vice-President, presiding

Dayendra Sena Wijewardane
Member

Goh Joon Seng
Member

New York, 23 November 2005

Maritza Struyvenberg
Executive Secretary