



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1290

Case No. 1372

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Spyridon Flogaitis, President; Mr. Dayendra Sena Wijewardane
Vice-President; Mr. Goh Joon Seng;

Whereas at the request of a former staff member of the United Nations Office for Project Services (hereinafter UNOPS), the President of the Tribunal extended to 31 March 2004 the time limit for the filing of an application with the Tribunal;

Whereas, on 31 March 2004, the Applicant filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 31 August 2004, the Applicant, after making the necessary corrections, again filed an Application containing pleas which read, in part, as follows:

“II. PLEAS and RELIEF SOUGHT

9. That the recommendation of the [Joint Appeals Board (JAB)] did not fully address my pleas.
10. That I be paid an amount equivalent to what I would have earned had my contract not been wrongfully terminated, [namely] ... two years and four months' ... salary.

11. That I be compensated for the mental torture resulting from the abuse, harassment and humiliation inflicted upon me by UNOPS during the termination process.
12. That the right emoluments due [totalling US\$ 68,952.37] be paid to me.

That interest be calculated at the appropriate rate for all amounts awarded to me from the time the amounts should have been paid. That any other material documentation required may be produced later.”

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 28 February 2005 and once thereafter until 31 March;

Whereas the Respondent filed his Answer on 31 March 2005;

Whereas the Applicant filed Written Observations on 31 August 2005;

Whereas, on 4 July 2006, the Tribunal put questions to the Respondent, and, on 14 July 2006, the Respondent provided his answer;

Whereas, on 5 and 24 July 2006, the Applicant submitted additional communications;

Whereas the statement of facts contained in the report of the JAB reads, in part, as follows:

“II. Facts of the Case

... On 14 January 2000, UNOPS advertised the position of Chief Technical Adviser ... to which the [Applicant] applied on 2 February 2000.

... After having been interviewed on 2 March 2000 for the post, he was chosen for the position on 3 March ... and was so informed. The [Applicant started working on 28 April and the] first 65 days of his work for UNOPS were conducted under a [special service agreement (SSA)].

... After protracted negotiations between the [Applicant] and ... UNOPS, UNOPS faxed an offer to the [Applicant] for a one-year fixed-term appointment as Chief Technical Adviser at the L-5/10 level on 24 July 2000. ... The offer was made ‘subject to medical clearance’ and impressed upon the staff member the urgency of receiving ‘certain documentation’ ... The documentation, the [Applicant] was informed, was necessary to ensure a ‘smooth entry into the office’ and its absence would ‘result in the delay of ... travel, shipment of personal effects as well in the payment of ... salary and allowances’.

... The [Applicant] signed and returned the ... offer by fax dated 27 July 2000. The effective date for the contract was to be 19 July 2000.

... Subsequently, the [Applicant] and UNOPS corresponded regarding the required documentation, because the [Applicant] had difficulty in producing the latter.

... It is [uncontested] that the [Applicant] then finally submitted the required documentation on 5 December 2000.

... On 18 December 2000, the ... Division for Human Resources Management, UNOPS, wrote to the [Applicant] and explained to him that 'due to the tardy submission of the required documentation (...) for your inclusion into our Payroll System' UNOPS was obliged to withdraw the fixed-term offer of appointment. At the same time, the [Applicant] was informed that he would be placed retroactively on [an SSA] for the period since July 2000.

... The [Applicant] responded by letter dated 23 December 2000, in which he protested against this procedure and put forth his view that delay in submitting documentation was not a valid ground for withdrawal of the offer of appointment.

... To this, the ... Division for Human Resources Management responded by letter of 23 January 2001, serving the [Applicant] with ... one month's notice for termination of contract. In that letter, the [Applicant] was informed that his one-year fixed-term contract was being 'foreshortened to expire on 31 March 2001 close of business'. He was further informed that his monthly payment of [US\$ 8,177.37] x 8.5 months including post adjustment[, Mobility and Hardship Allowance (MHA) and] dependency allowance for the period July 2000 to March 2001 amounting to [US\$ 70,307] would be placed in his account and that he would also be paid a termination indemnity of [US\$ 9,000]. Finally, he was informed that he would be given a one way repatriation travel ticket back to the [United Kingdom] and asked to sign an attached letter of no-contest so that payment [could] proceed. The aforementioned letter also contained the following passage:

'We appreciate your interest in working for UNOPS. However, I trust you will agree that, under the circumstances that prevailed subsequent to your recruitment, termination of your contract is the only workable solution to resolve the situation in the best interest of everyone involved in international development (...).'

[On 2 February 2001, the Country Representative of UNOPS informed the Applicant via e-mail that UNOPS had decided to provide him with a contract up to 31 March 2001 and that further extension of his contract would be contingent on his performance.]

... The [Applicant] responded by letter dated 9 February 2001[, stating that he was puzzled by the information conveyed by the 2 February e-mail as he had a contract until 19 July.] ... [He also] asked specifically for the reason why his contract was being terminated, whether it was because of the late submission of his documents or because of bad performance. He also voiced his opinion in that letter that poor performance was never independently evaluated and therefore could not be a valid reason. He further objected against making the payments due to him contingent upon signing a letter of [No-Contest]. As a result, [he] did not agree to sign [the] letter.

... The ... Division for Human Resources Management responded by letter dated 20 February 2001 and reiterated UNOPS' decision that terminating the [Applicant's] services was 'the only workable solution to resolve the situation in the best interest of everyone involved in international development'.

... The [Applicant's] further attempts at resolving the matter with UNOPS were unsuccessful and his contract remained terminated as of 31 March 2001.

... On 23 April 2001, the [Applicant] submitted his request for administrative review and on 24 July ... the [Applicant lodged an appeal with the JAB in Nairobi.]"

The JAB adopted its report on 24 March 2003. Its considerations and recommendations read, in part, as follows:

“VII. Considerations:

1. At the outset, the Panel examined the receivability of the appeal, in particular, whether the Appellant was entitled to appeal before the [JAB]. (receivability *rationae personae*)

While it is true that the staff member never received a letter of appointment which would have automatically made him eligible to submit an appeal to the [JAB], it is clear from the facts that the staff member did receive an offer of appointment under the 200 Series of the Staff Rules. This offer was accepted by him. Therefore, while there was **no contract of employment**, such contract being concluded by the issuance of a letter of appointment according to staff regulation 4.1, staff rule 104.1 and Annex II to the Staff Rules, there was a so called **contract for employment**. The legal consequence of such a contract for employment is that the agreement remains valid, effective and in force, unless the Respondent can show that the contract has become impossible of performance at any particular time or the assignment proves not to be feasible in the near future. The Applicant is entitled to indemnity in the absence of such reasons.

In the context of staff regulation 11.1, it is therefore clear that the staff member is seeking redress against an administrative decision alleging the non-observance of his rights under the agreement. That claim entitles him to seek redress under the appeals system of the United Nations.

...

2. Having established the receivability of the appeal, the Panel then examined the merits of the case. ...

The Panel took note of the assertions made by the Respondent that the Appellant's services were no longer needed, but could find no substantiation in this regard although it was called for, in particular when taking into account the burden of proof. Contrary to the Respondent's contentions, the documentation made available to the Panel clearly indicates that the issue between the Appellant and UNOPS was never about whether the kind of services that the Appellant provided were no longer of need, but rather performance related. In this context the Panel noted that UNOPS first based its termination on the grounds that the staff member had not submitted the necessary documentation for issuance of a letter of appointment and then later switched its grounds to performance related issues.

As to the first reason, it is clear that it would not constitute sufficient ground to withdraw an already made offer of employment. The Panel believes that the letter from the [Division for Human Resources Management] of 18 December 2000 was a mere pretext to justify termination and cannot stand a test of legal scrutiny. This even more so, when the very reason for which the termination was expressed had become moot by the time that letter was written, namely the submission of the required documentation. The letter of 18 December 2000 ... clearly shows that the required documentation was received on 5 December 2000; there was consequently no reason to now withdraw the offer of a fixed-term appointment, no matter how annoying or obstructing the late submission by the Appellant had been. The Panel is of the opinion that to withdraw an offer of appointment on such technical issues is a clear sign of

arbitrariness, especially when the Organization is taking advantage of the person's services at the same time. The Panel believes that the Organization is estopped from accepting services of a person on the basis of an offer made and then later to rescind that offer on grounds of relatively irrelevant administrative technicalities. In sum, the UNOPS was not entitled to withdraw its offer of appointment on the basis of the late submission of the documentation.

The only other reason, discernable from the documentation on which UNOPS then later based its termination, is the performance issue. In this respect however, the Panel noted that the only document that the Respondent has submitted in which performance issues were even remotely mentioned, was [the] e-mail sent by the Country Representative of UNOPS to the Appellant as late as 2 February 2001, a date when the termination had long been expressed *vis-à-vis* the Appellant. This e-mail concluded by informing the Appellant that 'we expect an altogether improved performance by mid March 2001 in order to take a decision on contract extension'. This sequence of events clearly shows that the Appellant was never properly appraised of possible shortcomings, in his work and when he was so appraised, this was done after the decision was taken to terminate his contract, i.e. belatedly. What would have been expected from UNOPS would have been to inform the staff member in a timely manner of his shortcomings, so as to allow him to improve his performance. Furthermore, the aforementioned e-mail and the subsequent behaviour by UNOPS management clearly show that there was no willingness to give the Appellant a chance: on the contrary, it shows that UNOPS had made up its mind and that the aforementioned e-mail was merely an expedient to give the semblance of procedural regularity.

Finally, the Panel reiterates that it did not find any evidence to support the Respondent's contention that there was no further need for the kind of services provided by the Appellant. In particular, the Appellant has alleged - and it has not been substantively disputed - that his post was advertised while he was still in the services of UNOPS in February 2001. In light of this undisputed assertion and given the fact that no other evidence is available to undermine it, the JAB Panel could assume that the functions of the Appellant's post were still needed and that therefore the only viable reason for termination of his contract, namely that the project goal had become obsolete, remained an unproved assertion by the Respondent.

In light of the above considerations, it is clear that UNOPS had no right to withdraw its offer of appointment or to terminate the agreement with the Appellant. In so far, the termination of the Appellant's contract for employment was wrongful. Therefore the Appellant deserves not only termination indemnity but also compensation for wrongful termination.

According to Annex III of the 200 series Staff Rules, the Appellant deserves six weeks termination indemnity.

[United Nations Office for Project Services [(UNOPS)]]

Regarding the wrongful termination, the staff member deserves two months' net base salary compensation.

...

Regarding the emoluments due to the staff member ... UNOPS ... submitted a memorandum dated 18 December 2002 to the Secretariat of the JAB, in which the outstanding issues are conveniently summarized.

According to the Respondent, the following payments are due to the staff member:

Repatriation Grant - [US\$ 12,000.00]
 Hardship Allowance - [US\$ 420.00]

Regarding the other entitlements, the staff member has either not submitted any proof or did not fulfil the requirements for receipt of those emoluments. An exception is the rental subsidy. In this regard the staff member ... submitted an application form on 5 August 2000 and a rental agreement. The conditions for payment of this subsidy were therefore fulfilled. The JAB was informed ... that UNOPS staff members are indeed entitled to the rental subsidy as all other international staff are in Nairobi. Consequently, the Appellant was also so entitled, the amount being 8 months x [US\$ 360 = US\$ 2,880].

The Appellant is therefore entitled to the following payments:

Repatriation Grant	- [US\$ 12,000.00]
Hardship Allowance	- [US\$ 420.00]
8 x \$360 - Security Allowance (Lump sum)	- [US\$ <u>2,880.00</u>]
Total	- [US\$ <u>15,300.00</u>]

VIII. Recommendations:

In the light of the foregoing considerations, the Panel recommends to the Secretary-General that the Appellant be paid:

- 1) **Six weeks' net base salary indemnity**
- 2) **Two months' net base salary compensation for the wrongful termination of his contract**
- 3) **[US\$ 15,300] for emoluments due to him."**

On 28 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 agrees with the conclusions of the Board. The Secretary-General further accepts the principles informing the recommendations of the Board, that is, that you should be paid (a) ... six weeks' termination indemnity; (b) two months' net base salary as compensation for wrongful termination; and (c) any emoluments due to you. The Secretary-General notes, however, that the Board's quantum of the amounts due to you was not verified with UNOPS, and that as a result of this omission, the Board lacked the required information for ascertaining the exact amounts due. The Secretary-General does not, therefore, accept the specific calculations made by the Board. He has, accordingly, decided to instruct UNOPS to ascertain that you have either received, or will promptly receive, the following: (a) a six weeks' termination indemnity; (b) two months' net base salary as compensation for wrongful termination; (c) other emoluments due to you, including the repatriation grant, the hardship allowance and, if applicable, the rental subsidy."

On 31 August 2004, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Applicant was the subject of mistreatment, harassment and abuse of authority.
2. When UNOPS decided to terminate the Applicant's contract, there was no evaluation of his service or conduct.
3. The Applicant's termination was wrongful and unwarranted.
4. The decision to terminate the Applicant's appointment was based upon falsehood and malice, and violated his due process rights.

Whereas the Respondent's principal contentions are:

1. The award to the Applicant of two months' net base salary constitutes appropriate compensation for the procedural irregularities in connection with the early termination of his contract.
2. The Applicant's claim for moral damages is unfounded.
3. All emoluments due to the Applicant, as a result of the early termination of his contract and otherwise, have been paid.

The Tribunal, having deliberated from 26 June to 28 July 2006, now pronounces the following Judgement:

I. The Applicant claims compensation for wrongful termination of his contract; the violation of his due process rights; and, for the harassment which he alleges against the Administration of UNOPS, Nairobi. He also claims that he has not been paid all the emoluments to which he is entitled under the terms of his contracts.

II. After being interviewed on the telephone on 2 March 2000 for the post of Chief, Technical Adviser of the Coffee Promotion and Cotton Improvement Project, UNOPS, the Applicant was informed on the following day itself by email that he had been selected for the post, in connection with a project which he believed was to continue for three years. At the time, he was working as a consultant to the World Bank on a contract which was to end in September 2000.

In the course of informing him of his selection for the post, he was told by the Coordinator of the UNOPS Nairobi Outpost that they had currently "6 professionals dealing with 40 projects in 15 countries in Eastern and Southern Africa handling a portfolio of approximately USD \$600 million" and that "depending on the workload and [the Applicant's] interests [he] could also become involved in other (future) UNOPS projects in the region". In view of the urgency of the work and the need to have the project implemented in a timely way,

it was suggested to the Applicant that, pending the finalization of the recruitment process, he would start working on an SSA which he did, commencing in April 2000. Having ended his relationship with the World Bank, he arrived in Nairobi on 28 April - on an SSA contract for 65 days - to take up his new appointment as Chief, Technical Adviser, no doubt in the hope of more stable employment than he had with the World Bank.

The letter dated 24 July 2000 on behalf of the Executive Director of UNOPS addressed to the Applicant, however, made it clear that UNOPS was offering him a one-year fixed-term appointment which the Applicant formally accepted on 3 August. The effective date of the appointment was to be 19 July, albeit, this date was to be finally “determined on receipt of all necessary clearances”.

III. Regrettably, the future did not work out as the Applicant had obviously hoped. The letter of appointment stipulated that the Applicant should submit certain documentation within fifteen days of the date of the letter, which was considered essential for determining his entitlements and payments. He was told that “the absence of the required documentation [would] inter alia delay the payment of his salary and allowances”. With good reason or otherwise, the documentation was not submitted until 5 December 2000 and the Applicant did not receive payment of salary until that month. That was not all: on 23 December, the Applicant received a letter dated 18 December informing him that, due to the “tardy submission of the required documentation”, the Administration was “obliged to withdraw” the fixed-term offer of appointment. The Applicant replied on 23 December, advancing a number of reasons why he had been unable to submit the requested documentation in time. He asked that all outstanding payments be made to him now, including “all initial lump sum allowances for travel, settling in at the duty station and the shipment of goods”. The Applicant also noted that there might be “different reasons” why the UNOPS Administration was taking this line of action.

IV. On 23 January 2001, UNOPS wrote to the Applicant giving him one month’s notice of termination of his one-year contract. He was also informed that his contract was being brought forward to expire on 31 March and that certain payments would be made to him if he could indicate his acceptance by signing a letter of “No Contest” which was enclosed in the communication. The Applicant did not yield to such pressure. This letter included the bald statement that UNOPS trusted that the Applicant would agree that “under the circumstances that prevailed subsequent to [his] recruitment, termination of [his] contract [was] the only workable solution to resolve the situation in the best interest of everyone involved in international development”. The Applicant, understandably, did not agree. It is also not clear to the Tribunal what was intended by including this statement.

To the Applicant's obvious surprise, the communication of 23 January 2001 was followed by an email of 2 February to the effect that the 31 March date for the expiry of the contract had been set "to provide [the Applicant] with adequate time to improve performance". The communication, which the Tribunal notes is dated well after the decision had been made to terminate the Applicant's services, details a list of shortcomings and suggestions for improvement and ends with the statement that "we have all confidence that the above matters can be ameliorated on time which will result in continued improved project implementation performance". The Applicant responded within a week, on 9 February, expressing puzzlement and recording a need to clarify "what [was] really happening". Was his default the late submission of documentation as required of him or was it the quality of his performance that was in issue? In essence, he countered that if it was the latter, the Administration's response was inappropriate in the circumstances "as no independent evaluation of the project [had] been carried out so far".

V. The Tribunal is of the view that, before a staff member is terminated on grounds of unsatisfactory performance, such performance must be properly evaluated and the staff member must be allowed a chance to improve. See, in this regard, Judgement No. 940, *Nag* (1999).

Administrative instruction ST/AI/1999/14 of 17 November 1999, entitled "Performance Appraisal System", clearly sets out the "checks and balances" that need to be heeded in assessing the performance of staff members:

"The Performance Appraisal System (PAS) is designed to improve overall organizational performance by encouraging a higher level of involvement and motivation and increased staff participation in the planning, delivery and evaluation of work. The system establishes a process for achieving responsibility and accountability in the execution of programmes approved by the General Assembly. It is based on linking individual work plans with those of departments and offices and entails setting goals, planning work in advance and providing ongoing feedback. *An important function of the PAS is to promote communication between staff members and supervisors on the goals to be achieved and the basis on which individual performance will be assessed, encouraging teamwork in the process.*" (Emphasis added)

None of the above guarantees and opportunities appear to have been afforded the Applicant and, thus, the Tribunal finds that his termination on the ground of unsatisfactory performance violated his rights.

VI. When the Applicant questioned the appropriateness of being terminated on grounds of performance, the response was an effort to find support for his termination on yet another basis. The Administration noted that like any other employer Agency within the United Nations system, UNOPS reserved the right to terminate the services of staff as provided under staff regulation 9.1 as and when circumstances so warranted. This, the Administration claimed, was

one of those circumstances. There was no explanation why good administration of UNOPS required such action and what the circumstances being relied on were. The staff member was not told in terms that his agreement was needed for action under regulation 9.1, but a rather disingenuous effort was made to draw him into the process by references to “the only workable solution” and the “best interest of everyone in international development”. A request was also made that that he sign a letter of “No Contest” which constitutes, in the Tribunal’s view, an oblique attempt to obtain the Applicant’s agreement as required by staff regulation 9.1. The Tribunal is, therefore, not taken by surprise by the Applicant’s claim that he stood confused, uncertain of his position and traumatized by the turn of events. The Tribunal recalls in this regard its Judgement No. 744, *Eren et al.* (1995), where it held, in paragraph XV, that “[t]his shift in grounds reflected in the Respondent’s decision raises a serious question with regard to due process”.

VII. In its report of 24 March 2003, the JAB noted that UNOPS first based the termination of the Applicant’s appointment on the late submission of documents, but then switched its grounds to performance-related issues and later the wider implication of agreed termination under staff regulation 9.1. According to the JAB report, the withdrawal of the offer of a fixed-term appointment was arbitrary, especially as the letter was written after the Applicant had submitted the required documentation and was a “mere pretext” for the termination of his appointment. The failure to submit documents called for, even if it was ever a valid ground for the withdrawal of the offer of appointment, had by that time become moot. As to performance issues, clearly the Applicant was never apprised of his shortcomings in a timely manner in accordance with established procedures as referred to above and, thus, the Applicant was not able to improve. Furthermore, the Respondent did not offer any evidence for his contention that there was no further need for the kind of services provided by the Applicant. Indeed, the Applicant claims that even before he separated from service, his post was advertised in connection with the same project for another two years. In the circumstances, the Tribunal cannot but agree that the JAB correctly concluded, in essence, that the Administration simply used various pretexts to wriggle out of its contractual arrangement with the Applicant, resulting in a wrongful termination of the Applicant’s appointment which would under normal circumstances have run to 19 July 2001, that is, for another three and a half months.

VIII. The Applicant appears to argue that the compensation for such wrongful termination should take account of his expectation that his contract would be extended for two years from the expiry of his fixed-term contract on 19 July 2001. Apart from the communication of 3 March 2000, which certainly indicated possibilities of continued association with UNOPS and its projects, the Applicant claims that, according to the initial advertisement of the post, the project in connection with which he was recruited was to go on for a period of three years, and,

the Tribunal notes, that the advertisement of the same post on 31 January 2001 certainly would indicate continuance of the project. However, whilst the Tribunal sympathizes with and understands the state of mind in which the Applicant received the information about future employment possibilities, it is nonetheless clear that the facts in this case do not amount to, or create, any legal expectation for the renewal of his fixed-term contract after the stated expiry date and that payment of compensation to the Applicant cannot be based on a right to renewal of his contract.

IX. The Applicant has requested compensation for the treatment he received at the hands of the UNOPS Administration which he claims amounted to harassment, and has detailed the pressures he was subjected to including the humiliating way he had been dealt with. Whilst the Respondent has generally denied these claims, the Tribunal finds that the Respondent has failed to deal with the specifics of these allegations. It is evident that the way the Applicant was left to fend for himself in a difficult duty station and in a highly unfriendly working atmosphere, clearly intimidated and even traumatised this relatively new staff member who was being cast aside. It left him understandably confused and humiliated. The cumulative effect of the facts in the case, reveal a lack of transparency in the way the Administration dealt with the Applicant and clearly destabilized him in a way which the Tribunal views as harassment justifying compensation. The Tribunal recalls in this regard its Judgement No. 997, *van der Graaf* (2001), where it held that “the humiliation brought upon the Applicant was disproportionate and unnecessary, warranting compensation” and Judgement No. 1009, *Makil* (2001).

X. Finally, in the third and concluding part of the Applicant’s claim, he maintains that the Respondent has failed to pay him a number of emoluments due to him which he itemizes for a total sum of US\$ 68,952.37. In respect of these, the JAB recommended payment of a sum of US\$ 15,300. The Secretary-General did not consider that the JAB had the required information to make this calculation and, accordingly, in August 2003, decided to “instruct UNOPS to ascertain that [the Applicant had] either received, or [would] promptly receive [the payments due to him]”. Subsequently, in his submissions to the Tribunal, the Respondent only mentions items paid and items not due on the available documentation. Thereafter, the Applicant provided further information on claims he states are still due to him and provided additional supporting documentation to the Tribunal. This did not lead to any further examination by the Respondent.

On 14 July 2006, transmitting a memorandum from UNOPS dated 13 July, in response to the Tribunal’s request for yet further information, the Respondent, apart from claiming payment of certain entitlements, admits that further entitlements are owed to the Applicant; expresses willingness to make such payments; and, seems prepared to pay even more

reimbursement upon submission of proper verification. Especially in light of the Secretary-General's decision in August 2003, the Tribunal is disappointed with the Respondent's failure to obtain, within suitable deadlines, whatever additional information was required from the Applicant and to have arrived at an audited resolution of this matter. The Tribunal is not in a position to carry out an audit of this nature in regard to such detailed items which are claimed to be due.

In this connection, the Tribunal recalls its pronouncement in Judgement No. 1012, *Baldwin* (2001), emphasizing that

“while budgetary and accounting rigor is important, the Organization must be fair toward its employees. Sometimes, in cases of doubt, the Administration might be warranted in deciding a claim in favor of the staff member, as was done concerning some of the claims made by the Applicant. The Tribunal cannot rule whether this exercise of discretion in favor of the staff member should predominate. It merely notes that on occasion this approach would obviously be the appropriate one.”

Based on the admission of the Respondent and consistent therewith, the Tribunal is of the view that the Respondent should pay to the Applicant all amounts as agreed by UNOPS in its memorandum of 13 July 2006, including all related ancillary claims consequential thereto, and carry out a final audit within three months of the date of distribution of this Judgement, with a view to reimbursing the Applicant all sums determined to be due to him. The Tribunal considers that such an audit is long overdue in this case and makes its order on that basis.

XI. In view of the foregoing, the Tribunal:

1. Orders the Respondent to pay the Applicant the equivalent of three-and-a-half months' net base salary at the rate in effect at the time of his separation from service, the amount left of his one-year fixed-term appointment, 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;
2. Orders the Respondent to pay the Applicant six months' net base salary for the violation of his due process rights at the rate in effect at the time of his separation from service, 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;
3. Orders the Respondent to pay to the Applicant all agreed amounts per UNOPS' memorandum of 13 July 2006, 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;

4. Orders the Respondent to compensate the Applicant in the amount of US\$ 5,000 for the delays in paying him his entitlements;

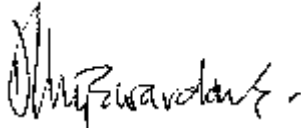
5. Orders the Respondent to carry out the final audit of all outstanding claims and disputed payments and make such payments as are found due, within three months of the date of distribution of the Judgement, or, in the alternative, compensate the Applicant in the amount of US\$ 40,000, with interest payable at eight per cent per annum as from 90 days from the date of distribution of this Judgement until payment is effected; and,

6. Rejects all other pleas.

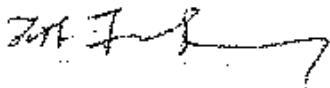
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Spyridon Flogaitis
President

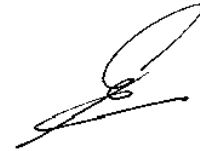


Dayendra Sena Wijewardane
Vice-President



Goh Joon Seng
Member

Geneva, 28 July 2006



Maritza Struyvenberg
Executive Secretary