



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1430

Case No. 1498

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 Environment Programme (hereinafter referred to as “UNEP”), the President of the Tribunal granted an extension of the time limit for filing an application with the Tribunal until 31 January 2006, and several times thereafter until 30 September;

Whereas, on 29 August 2006, the Applicant filed an Application containing pleas which read, in part, as follows:

“II: PLEAS

...

9. ... *[To find that]*:

(a) as a consequence of good performance reviews during the first year of the Applicant’s work period and the sufficient funding of the post, that the Applicant was given an expectancy of renewal of his fixed-term contract;

(b) the contested decision of the Executive Director of UNEP to not extend the fixed-term contract of the Applicant was vitiated by arbitrariness, prejudice and other extraneous motives, as found in the Ombudsman’s reports;

(c) as confirmed by the ... Rebuttal Panel's decision on upgrading a rating in the Applicant's [performance appraisal system report (PAS)] and the Ombudsman's reports, the allegations of inadequate performance were unsubstantiated and vitiated by arbitrariness, causing damage to the Applicant;

(d) as also found by the Ombudsman reports, the Applicant was intimidated, deprived of the ability to discharge his duties, and subsequently harassed at work under exceptional circumstances, constituting a violation of his rights and causing damage to his health and reputation;

(e) the rejection of investigation of the case by [the Office of Internal Oversight Services (OIOS)] requested by the Ombudsman constituted denial of the Applicants rights and obstruction of justice;

(f) the Respondent did not undertake good faith efforts to place the Applicant in an alternative post as recommended by [the] UNEP Medical Service;

(g) the false and misleading paper trail created by [the] UNEP Administration, the discriminatory actions against the Applicant by UNEP, and the failure of UNEP Administration to update the Applicant's file with the PAS Rebuttal Report, together caused irreparable harm to the professional reputation of the Applicant and effectively ended his chosen career path in UNEP.

10. With regard to the need to consider important additional evidence in support of his Appeal, the Applicant respectfully requests the Administrative Tribunal to conduct an oral hearing ...

11. ... [And *to order* that]:

(a) the Applicant be retroactively reinstated in a post within UNEP commensurate to the level, professional experience and qualifications of the Applicant;

(b) the former Director of UNEP/[Division of Global Environment Facility (DGEF)] be censured and the Applicant receive an official apology from UNEP for the harm caused to him and a job referral statement confirming his employment dates and his satisfactory performance during the period of service;

(c) the Applicant be compensated 24 months' net salary for the damages caused to his career, pension and other entitlements, and the denial of career opportunities after his contract expired;

(d) the Applicant be awarded 24 months' net base salary as compensation for denial of due process and for the serious harassment and intimidation he endured, which resulted in emotional suffering to both the Applicant and his family;

(e) Financial Rule 114.1 and staff rule 112.3 be invoked to pay compensation to the Applicant;

(f) 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; to order that the Applicant be compensated six months net base salary for the irreparable harm caused to his professional reputation;

(g) that the Applicant's official status file at UNEP be updated ...

...”

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 14 February 2007, and once thereafter until 14 March;

Whereas the Respondent filed his Answer on 13 March 2007;

Whereas the Applicant filed Written Observations on 17 May 2007;

Whereas, on 31 October 2008, the Tribunal decided not to hold oral proceedings in the case;

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

“Employment history

... The [Applicant] entered the services of the United Nations in November 2000 at the P-5 level on a two-year fixed-term contract with UNEP/GEF as Senior Programme Officer. He ... separated from the Organization on 17 November 2002 when his fixed-term contract expired.

Facts of the Case

...

... In April 2001, the Director, DGEF, informed the [Applicant] that he would send him on a country dialogue workshop to Mauritius from 11 to 13 July ... Accordingly, the [Applicant] visited that workshop ... It has remained undisputed between the parties that the [Applicant] went on three missions and attended three major meetings with stakeholders in Nairobi during his time with UNEP.

... On 26 June 2001, the [Applicant's] First Appraising Officer and the Deputy Director, DGEF, signed off on his mid-term review without criticism of [his] performance.

... On 17 August 2001, the Director, DGEF, sent e-mails to the [Applicant] informing him that his performance as a Senior Programme Officer was disappointing.

... On 21 August 2001, the [Applicant] met with the Director, DGEF, who again informed the [Applicant] of his dissatisfaction with [his] performance. In the following week, the [Applicant] received e-mails both from the Director, DGEF, and his First Appraising Officer criticizing his comments at a recent bilateral meeting.

... A further meeting was held together with the First Appraising Officer, the Director, DGEF, and the [Applicant] on 5 September 2001, in which the [Applicant] was again told that his performance was not satisfactory.

...

... On 23 January 2002, the First Appraising Officer signed the end-year PAS review. In the PAS, the First Appraising Officer criticized the [Applicant], stating that his time-management was bad and that more emphasis needed to be placed on increasing the UNEP portfolio of projects. He gave the [Applicant] a rating of 'partially meets performance expectations'.

... The following day, 24 January 2002, the [Applicant] met with the First Appraising Officer to express his surprise and disappointment at the comments and grading. In the

[Applicant's] view, the comments were unfair as he had met or exceeded all the goals identified in his PAS work plan. According to the [Applicant], the First Appraising Officer suggested he could change the comments but he would not change the grading. The [Applicant] then informed the First Appraising Officer that he would rebut the PAS.

...

... On 4 February 2002, the Director, DGEF, and the [Applicant] held a PAS meeting to discuss the appraisal for the year 2001 and the work plan for the year 2002. In that meeting the performance deficiencies as viewed by the Director, DGEF, were discussed.

... On 5 February 2002, the Director, DGEF, forwarded the PAS to the [Applicant] with the following comments: 'After one year of activity, the performance of the staff member has been appalling and sometimes embarrassing. If the performance of the staff member does not improve dramatically in 2002, his contract will not be extended.'

... On the same day, the UNEP Ombudsman who had been previously approached by the [Applicant], acknowledged receipt of [his] request for ... intervention and informed him that he was officially seized of the case.

...

... On 14 February 2002, the Ombudsman provided a report of his findings to the [Applicant]. This report made strong accusations of harassment, discrimination and threatening behaviour against the Director, DGEF, and advised the [Applicant] that he should urgently involve OIOS to investigate these claims and noting that he had 'seldom seen such a blatant disregard for staff member's rights as was manifest in the [Applicant's] case'. The Ombudsman even went further and advised the [Applicant] to attach his (the Ombudsman's) report to a request for investigation to OIOS. In his cover-memorandum to the report, the Ombudsman admitted that his findings were based on one-sided collection of information from the [Applicant] and that he had not gathered any evidence from the Director, DGEF, or the first Reporting Officer. Later in July of that year, the Ombudsman also wrote to the Under-Secretary-General, [OIOS], and submitted a personal complaint against the Director, DGEF.

... By memorandum of 15 February 2002, the [Applicant], following the advice of the Ombudsman, requested the Audit Division of OIOS (with a copy to the Investigation Division of OIOS), to conduct an audit/investigation into his concerns.

... On 27 February 2002, the [Applicant] attended a meeting with the UNEP Deputy Executive Director to explain to him the concerns of the Ombudsman and OIOS. According to the [Applicant], the Deputy Executive Director offered him a post elsewhere in UNEP at the time. The Respondent has disputed this during these proceedings and maintains that the Deputy Executive Director only asked the [Applicant] to identify vacancies within UNEP for which he deemed himself suitable and offered to explore other options, but gave no promise of placement within UNEP. He also offered his assistance should the [Applicant] identify a job outside of UNEP, which he never did. It has remained undisputed that the Deputy Executive Director did indeed offer a post in the Ozone Secretariat, UNEP, but the [Applicant] declined as he 'had moved on from that and Ozone was no longer an issue in developed countries'. He did, however, later apply to that position, but was eventually not placed on it. The [Applicant] applied to two other positions and informed the Deputy Executive Director accordingly, but was not chosen for those positions after a competitive recruitment process.

... By memorandum dated 9 March 2002, the [Applicant] wrote to the UNEP Deputy Executive Director asking him to transfer him to a position that offered a positive career move which would 'restore his path of advancement and have the potential to restore his personal standing and credibility as well as his future career prospects'.

... On 11 March 2002, the [Applicant] submitted his rebuttal against the rating in his 2001/2002 PAS.

...

... During the course of July 2002, the [Applicant] visited the [United Nations] Medical Adviser who attested that he was suffering under work-related stress. On 18 July ..., the [United Nations] Medical Adviser wrote to the Chief of [Human Resources Management Services, United Nations Office at Nairobi,] that the [Applicant] was suffering from chronic work-induced stress and that in her opinion his health had deteriorated to the stage where he ‘must either be transferred to another place of work with another supervisor or begin immediately an extended period of sick leave’. ...

... By memorandum dated 24 July 2002, the [Applicant] was informed ... that ... UNEP did not intend to extend his contract beyond its expiry date on 17 November ...

... By memorandum dated 16 August 2002, the [Applicant] submitted a request for administrative review and on 20 August ..., he submitted to the [JAB in Nairobi] a request for suspension of action regarding the decision not to extend his fixed-term contract ...

... On 12 September 2002, the Rebuttal Panel deliberating on the case of the [Applicant’s] 2001/2002 PAS submitted its report. The PAS Rebuttal Panel decided in its report that the PAS rating of ‘partially meets performance expectations’ was unwarranted and should be upgraded to a rating of 3, i.e. ‘fully meets performance expectations’.

... In its report of 7 November 2002, the [JAB] rejected the [Applicant’s] request for suspension of action, as he had not met his burden of proving irreparable damage, as required under those proceedings.

... By letter dated 8 November 2002, the Under-Secretary-General for Management informed the [Applicant] that he had decided to accept the JAB’s recommendation and consequently his application for suspension of action was rejected.

...”

On 11 November 2002, the Applicant lodged an appeal with the JAB. The JAB adopted its report on 24 February 2005. Its considerations and recommendations read, in part, as follows:

“Considerations

...

1. The Appellant has alleged that he was subject to a systematic campaign of harassment and abuse of power on the part of the Director, DGEF.

The Panel has closely examined the documentation submitted by the Appellant. One of the major contentions of the Appellant and the Ombudsman is that the constant string of e-mails, which the Director, DGEF, sent to the Appellant constituted a form of harassment. A close examination of this correspondence however, does not support the Appellant’s or the Ombudsman’s view on this. ... Since it is the Appellant who carries the burden of proving arbitrariness or abuse of power, the Panel concluded that he has not discharged this burden with the evidence submitted.

Having said this, the Panel does believe that the method chosen by the Director, DGEF, to rectify the perceived shortcomings could have been more diplomatic and more efficient. What the Panel would have liked to have seen was more evidence of systematic attempts at identifying the Appellant's shortcomings by setting up a performance improvement plan with clear benchmarks, so as to enable the Appellant to unambiguously and clearly understand what was expected of him. This would also have been in accordance with the stipulations and the spirit of the [administrative instruction] dealing with the Performance Appraisal System. The Panel will return to this issue under No. 4. below.

2. The Appellant also contends that he was prevented from working effectively because, on the one hand, he was not allowed to meet his national counter-parts and, on the other hand, he was undermined by the DGEF management, which assigned functions that should properly have been assigned to him to other junior staff. He also contends that two projects were deliberately withheld from submission to the Secretariat of GEF by the Director, DGEF so as to make him look less effective than he was.

Firstly, the Panel is not persuaded by the Appellant's assertion that meeting relevant stakeholders in person was absolutely essential in order for him to perform his duties. ...

Secondly, the Appellant's contention that junior staff was frequently assigned responsibilities that fell into his area of work in circumvention of his official responsibilities was not corroborated by the evidence submitted by him. ...

...

3. The Appellant has contended that since his performance for the period 2001 to March 2002 was rated as fully meeting performance expectations by the Rebuttal Panel, his contract should have been renewed.

The Panel agrees with the Appellant that for the period 2001 to March 2002, his performance must be deemed as fully meeting performance expectations as a result of the Rebuttal Panel's report.

It is clear from the time lines of this case, ... that when the decision not to renew the Appellant's contract was made in July 2002 the rebuttal process had not yet been concluded. Consequently, when the decision was made not to renew the Appellant's contract, the Executive Director, UNEP could rightly assume that the Appellant had not performed to standard for the period 2001 to July 2002.

The question that arises is whether that decision should have been re-evaluated in the light of the Rebuttal Panel's report which came out in September 2002, two months before the expiration of the Appellant's contract. In this context, the Panel believes that the decision not to extend a fixed-term contract is made not only on the basis of the previous performance year, but also on the basis of the perception of a staff member's on-going performance at the time of the contract expiry.

...

The Panel then turned to the question how this should have affected the decision of contract renewal. Particularly, the question arises whether the previous reporting period from January 2001 to March 2002, in which he is deemed to have fully met performance expectations, narrowed the discretion of the Executive Director to such an extent that the only right decision would have been to renew his contract.

The Panel is unable to assume such a reduction of discretionary power in the face of the perceived substantial shortcomings in the Appellant's performance. In this context, the Panel also

took note of section 10.2 of ST/AI/2002/3 [of 20 March 2002, entitled 'Performance Appraisal system'] which clearly states that even ratings of 'fully meets performance expectations' and above do not prejudice the principle that decisions concerning the renewal of fixed-term contracts remain in the full discretion of the Secretary-General.

The Appellant had signed a fixed-term contract and was aware that there was no automatism in the renewal. It must be left in the discretion of the Executive Director, UNEP, in the face of perceived poor performance and given the serious disruption in the work environment of the DGEF, to decide not to renew the Appellant's contract. In other words, the previous good performance as per the Rebuttal Panel's report was only one of several factors, which the Executive Director had to take into account when making his decision regarding contract renewal.

... It is the Panel's opinion that in the light of all the aforementioned circumstances, the Executive Director's decision not to renew the Appellant's contract can not be seen to have been tainted by arbitrariness or abuse of power.

4. ...

However, as briefly indicated above under No. 1. the Panel does take issue with the way in which the shortcomings of the Appellant were addressed.

... [T]he Panel concluded that three months' net base salary is adequate compensation for this procedural violation of the Appellant's rights.

Recommendations:

In light of the above considerations, the Panel recommends to the Secretary-General that:

1. The Appellant be compensated in the amount of three months' net base salary.
2. The Appeal be otherwise rejected."

On 25 July 2005, the Under-Secretary-General for Management transmitted a copy of the report to the Applicant and informed him that:

"The Secretary-General ... agrees with the JAB's findings that you were not subjected to harassment, arbitrariness or abuse of power and that you did not have a legal expectancy for the renewal of your contract. He does not however agree that there should have been a greater effort to identify your shortcomings, since it appears from the record that there is substantial documentation in this regard. The Secretary-General has therefore decided not to accept the JAB recommendation to pay you compensation."

On 29 August 2006, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. As a consequence of good performance reviews during the first year of his work period and the sufficient funding of the post, he was given an expectancy of renewal of his fixed-term contract.
2. The decision not to extend his fixed-term contract was vitiated by arbitrariness, prejudice and other extraneous motives.

3. The allegations of inadequate performance were unsubstantiated and vitiated by arbitrariness, causing him damage.

4. He was intimidated, deprived of the ability to discharge his duties, and subsequently harassed at work under exceptional circumstances, constituting a violation of his rights and causing damage to his health and reputation.

5. The rejection of investigation of the case by OIOS, as requested by the Ombudsman, constituted a denial of his rights and obstruction of justice.

6. The Respondent did not undertake good faith efforts to place him in an alternative post as recommended by the UNEP Medical Service.

Whereas the Respondent's principal contentions are:

1. The Applicant had neither the right nor the legal expectancy of renewal of his fixed-term appointment and the non-renewal of his contract did not violate his rights.

2. The assessment of the Applicant's performance and the decision not to renew the Applicant's fixed-term contract were not motivated by prejudice, improper motive or other extraneous factors. Nor was the Applicant a victim of harassment.

3. The Respondent is not responsible for alleged harm to the Applicant's career.

The Tribunal, having deliberated from 31 October to 26 November 2008, now pronounces the following Judgement:

I. The Applicant entered the service of UNEP in November 2000, at the P-5 level as Senior Programme Officer. His initial fixed-term contract was for two-years. Subsequently, his contract was not extended. On 26 June 2001, the Applicant's mid-term review was signed, without criticism of his performance. On 17 August 2001, however, he was informed by email that his performance was disappointing. Thereafter, his supervisors repeatedly expressed their dissatisfaction. On 23 January 2002, his first Reporting Officer signed his PAS, rating the Applicant as "partially meets performance expectations". On 5 February 2002, the Director, DGEF, forwarded the PAS to the Applicant, indicating that unless his performance improved dramatically, his contract would not be extended.

On the advice of the UNEP Ombudsman, on 15 February 2002, the Applicant asked OIOS to conduct an audit/investigation into whether he had been subjected to harassment, discrimination and abuse of authority in the workplace. The Ombudsman had indicated that, under the circumstances and in light of the gravity of the concerns raised by the Applicant and other staff members, he did not consider it possible for him to mediate and that the urgent input of OIOS was required.

On 11 March 2002, the Applicant rebutted his PAS. In its report dated 12 September 2002, the Rebuttal Panel concluded that the Applicant's rating was unwarranted and should be upgraded to "fully meets performance expectations".

In the interim, by memorandum dated 24 July 2002, the Applicant was informed that UNEP did not intend to extend his contract, which was due to expire on 17 November 2002. On 16 August 2002, the Applicant requested administrative review of the decision not to extend his fixed-term contract. On 11 November 2002, the Applicant lodged an appeal with the JAB. He separated from service on 17 November 2002, upon the expiration of his fixed-term contract. In its report dated 24 February 2005, the JAB concluded that the Applicant had proven neither harassment nor the existence of an expectancy of renewal of his fixed-term contract. However, it found that his rights had been violated in the performance appraisal process, and recommended compensation of three months' net base salary. By letter dated 25 July, the Applicant was advised that the Secretary-General rejected the JAB's findings and recommendation with respect to violations of his due process rights, on the basis that there was "substantial documentation" with respect to his performance "shortcomings".

On 29 August 2006, the Applicant filed his Application with the Tribunal.

II. Insofar as the Applicant's request for retroactive reinstatement is concerned, the Tribunal recalls that he held a two-year fixed-term appointment, expiring on 17 November 2002. Staff rule 109.7 (a) states that a "temporary appointment for a fixed term shall expire automatically and without prior notice on the expiration date specified in the letter of appointment". The Applicant's letter of appointment also contained a clause specifying that he had neither expectancy of renewal nor of conversion to any other type of appointment.

The Applicant contends, however, that the good performance review that he received for his first year gave him an expectancy of renewal. According to the jurisprudence of the Tribunal, employment within the Organization on a fixed-term contract ends on the expiry date of the contract, and efficient work performance does not create an expectancy of renewal. (See Judgements No. 427, *Raj* (1988) and No. 440, *Shankar* (1989).) As the Tribunal held in Judgement No. 1237 (2005), "good or even outstanding performance does not automatically lead to any conclusion that a fixed-term contract would be extended and creates by itself no entitlement to such an extension". The Tribunal has also held that upon the expiry of a fixed-term appointment, there is no contract to which the staff member could be reinstated. (See Judgement No. 1058, *Ch'ng* (2002).)

III. The Applicant claims that the assessment of his performance, and the resulting decision not to renew his fixed-term contract, was arbitrary, and induced by prejudice as well as by improper and extraneous factors. The Applicant also alleges that he had been subjected to harassment by the Director, DGEF. The JAB had examined the Applicant's allegation and "could not find any evidence of [harassment or abuse of power] on the part of the Director, DGEF". The burden of discharging such allegations rests on the Applicant. (See Judgements No. 438, *Nayyar* (1988) and No. 554, *Fagan* (1992).)

The Applicant refers to the good performance rating he received for the first year of his employment to support his contention that UNEP's assessment that his performance was less than

satisfactory and its decision not to renew his fixed-term appointment were improperly motivated. The JAB considered this allegation in the light of the facts presented to it and came to the conclusion that “the Executive Director exercised his discretion properly in deciding that both the perceived lack of performance as well as the irreparable work-relationship between the [Applicant] and the Director, DGEF, justified the decision not to extend the [Applicant’s] fixed-term contract”. The Tribunal has not been persuaded that the JAB’s finding was erroneous. The Applicant placed strong reliance on the change in his performance rating by the Rebuttal Panel from “partially meets performance expectations” to “fully meets performance expectations”. This could not give rise to an entitlement of renewal of the Applicant’s fixed-term contract. To hold otherwise would fetter the Executive Director’s discretion in such staff matters and subject it to the judgement of the Rebuttal Panel.

With respect to the report of the Ombudsman that the decision not to renew the Applicant’s fixed-term contract was improperly motivated, the Tribunal cannot place much reliance on that report as the Ombudsman admitted that his findings were based on one-sided collection of information from the Applicant and that he had not gathered any evidence from the Director, DGEF, or the first Reporting Officer.

IV. Notwithstanding the foregoing, the Tribunal is not satisfied that the Applicant’s performance evaluation was completed in a reasoned, cautious and proper manner. Rather, it appears that the Applicant’s supervisors avoided the prescribed evaluation process, using e-mail and informal meetings rather than the mid-year review to express dissatisfaction. Thus, depriving the Applicant of an opportunity to be properly advised of his shortcomings and also depriving him of an opportunity for improvement.

The Tribunal is in agreement with the finding of the JAB that the Applicant’s supervisors failed to observe the requirements of section 8.3 of ST/AI/2002/3. The administrative instruction reads, in relevant part, “[a]s soon as a performance shortcoming is identified; the first Reporting Officer should discuss the situation with the staff member and take steps to rectify the situation, such as the development of a performance improvement plan in consultation with the staff member”. The string of memoranda from the Director, DGEF, fell well short of what was required under the administrative instruction, to the point where it almost appears to be harassment. Therefore, the Tribunal agrees with the JAB’s recommendation of compensation for this procedural violation.

V. Having found the Applicant’s rights were violated in the performance evaluation process, the Tribunal must review the appropriate compensation. It recalls its Judgement No. 1237 (*ibid.*), in which it held:

“where inadequate performance is the reason for the decision [not to renew a contract] and the process of evaluation is as seriously flawed as in this case, an implication arises that, had a correct evaluation been made, then the Applicant’s contract may or would have been extended. Certainly, the Tribunal finds no difficulty in taking this into consideration for the purposes of assessing compensation payable for denial of due process and, in this context, the fact that the Applicant had

only served one year is irrelevant in the particular circumstances of this case. He unfairly lost an opportunity to increase his length of service. As observed above, the unfair prejudice in regard to his future employment opportunities with the Organization was expressly recognized by the Respondent. Consequently, whilst, generally speaking, length of service is undoubtedly a factor in considering compensation, in this case the Tribunal finds the argument to be circuitous when the Respondent claims that three months' net base salary is sufficient compensation because the Applicant had only served the Organization for one year. The Respondent cannot rely on the Administration's own flawed process and the impugned decision made on that basis in order to limit the compensation payable."

In the instant case, while the Applicant's rights were indeed violated, the quantity of critical material on his performance and the fact that, at the P-5 level, he ought to have been able to operate with minimal supervision dissuades the Tribunal from awarding high compensation. It considers that, had his performance been evaluated correctly, the Applicant was unlikely to have had his contract extended. Moreover, unlike the staff members in Judgement No. 1237 and in Judgement No. 1429, rendered at this session, the Applicant in the instant case had the benefit of rebuttal proceedings prior to his separation from service, albeit not prior to the official decision regarding his future employment. For these reasons, under the circumstances of this case, the Tribunal assesses the appropriate compensation at six months' net base salary.

VI. Finally, the Tribunal will review the Applicant's claims that the refusal of OIOS to investigate, as recommended by the Ombudsman, was a denial of his rights and obstruction of justice. The Tribunal, in Judgement No. 1319 (2007),

"recall[ed] its long-standing jurisprudence that to hold an investigation is at the discretion of the Administration. In particular, it note[d] Judgement No. 1271 (2005):

'Moreover, the Tribunal wishes to stress that, even if it had been in the Applicant's interests to take action on this issue, the decision to conduct such an investigation is the privilege of the Organization itself. In Judgements Nos. 1086, *Fayache* (2002), and 1234 (2005), the Tribunal heard requests for the instigation of disciplinary proceedings against staff members and noted that "[i]t is not legally possible for anyone to compel the Administration to take disciplinary action against another party" (*Fayache*). This reasoning applies, by analogy, to the kind of general investigation requested by the Applicant in the present case.'

The decision to investigate or otherwise must be left to the discretion of the Respondent. In the absence of evidence of bias or collusion or sheer neglect of duty on the part of OIOS, the Tribunal will not attribute such refusal to improper motives.

VII. In view of the foregoing, the Tribunal:

1. Orders the Respondent to pay the Applicant compensation in the amount of six months' net base salary at the rate in effect at the date of 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)



Spyridon Flogaitis
President



Dayendra Sena Wijewardane
Vice-President



Goh Joon Seng
Member

New York, 26 November 2008



Maritza Struyvenberg
Executive Secretary