



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1472

Case No. 1545

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Ms. Jacqueline R. Scott, First Vice-President, presiding; Ms. Brigitte Stern; Mr. Goh Joon Seng;

Whereas at the request of a former staff member of the United Nations, the President of the Tribunal granted an extension of the time limit for filing an application with the Tribunal until 8 February 2007, and regularly thereafter until 15 August 2007;

Whereas, on 22 June 2007, the Applicant, filed an Application containing pleas which read, in part, as follows:

- “8. On the merits, the Applicant requests the Tribunal ...:
- (a) *to rescind* the decision of the Secretary-General accepting the recommendation of the JAB [Joint Appeals Board] to take no further action;
 - (b) *to find and rule* that the findings of the JAB were based on errors of fact and law;
 - (c) *to find and rule* that the compensation provided by the Respondent is inadequate in light of the gross negligence and excessive delay of the Respondent;
 - (d) *to award* the Applicant one hundred thousand dollars for the losses he has sustained and an additional one hundred thousand dollars for moral damages and for the delay in handling his case;

(e) *to award* the Applicant as cost, the sum of \$10,000.00 in legal fees and \$500.00 in expenses and disbursements.”

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 24 January 2008, and once thereafter until 25 February;

Whereas the Respondent filed his Answer on 12 February 2008;

Whereas the Respondent filed an additional communication on 5 June 2008;

Whereas the Applicant filed Written Observations on 24 November 2008;

Whereas, on 9 July 2009, 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 JAB reads, in part, as follows:

“Employment history

... The [Applicant] first joined the United Nations on 2 February 1987, as an L-3, step 7 with United Nations Development Programme (UNDP). From November 1997 to October 1999, the [Applicant] served as Deputy Resident Representative (DRR) (Programme) at the P-4 level in the Democratic Republic of the Congo (DRC). From November 1999 to April 2000, the [Applicant] was detailed to UNDP’s Malabo, Equatorial Guinea office. In April 2000, he was appointed as DRR (Operations) for UNDP Malabo. Effective 28 September 2000, the [Applicant] was notified of his suspension from duty and his placement on special leave with full pay (SLWFP) pending an investigation into allegations against him for unauthorized use of the UNDP telephone system. The [Applicant] left on Home Leave to Abidjan, Cote d’Ivoire on 29 September 2000. The disciplinary investigation was completed on 19 July 2001. The [Applicant] was summarily dismissed on 17 April 2002. He appealed to the Disciplinary Committee (DC) and the DC recommended that the [Applicant’s] dismissal be rescinded and that he be issued a Letter of Reprimand. On 17 May 2005, a Settlement Agreement was reached between the [Applicant] and UNDP to rescind the [Applicant’s] dismissal and place him on special leave without pay, retroactively, from 17 April 2002 to 17 May 2005. The Settlement Agreement provided for the mutual release from all claims and the [Applicant] agreed to his separation from service.

Summary of the facts

... In April 2000, the [Applicant] was assigned to Apartment No. 3 in the UNDP residential compound in Malabo. In July 2000, the [Applicant’s] personal belongings arrived in Malabo. In September 2000, the [Applicant] moved a portion of his personal belongings to a larger apartment, Apartment No. 8, in the same compound in anticipation of his family’s arrival.

... On 29 September 2000, the [Applicant] left on Home Leave to Abidjan, Cote d’Ivoire in order to bring his family back to his duty station in Malabo. While travelling to Cote d’Ivoire, he was informed of the decision effective 28 September 2000, suspending him from duty and placing him on SLWFP pending the investigation into misuse of the UNDP telephone system. The [Applicant] remained with his family in Abidjan.

... On 22 December 2000, while the investigation was underway, UNDP Malabo attempted to remove the [Applicant’s] personal belongings from Apartments No. 3 and No. 8 to provide needed space for arriving staff. According to the Respondent, “[t]his effort was not completely successful.” The [Applicant] and the Respondent disagree on whether the [Applicant] was informed of and agreed to this move. By email dated 16 May 2001, UNDP Africa subsequently

informed the [Applicant] via email that UNDP Malabo was going to pack his personal belongings and store them pending the outcome of the disciplinary case against him. By email dated 18 May 2001, the [Applicant] responded and stated that:

‘...after the month of December last, as mentioned by my maid, she no longer has access to my apartment, because instructions had been issued to take all my personal effects and to put them inside another apartment which was then closed. Therefore, as she could no longer have access as usual to come and work cleaning my personal effects, she could not do anything to avoid their damage by the humidity. Because of the fact that the office dismantled my house, I would greatly appreciate if this can be verified. As you can understand, the effect of the humidity on furniture and other electronic items can be ugly.’

... On 27 June 2001, UNDP/Malabo executed an inventory listing of the [Applicant’s] personal belongings and then moved them into Apartment No. 12, also located in the UNDP residential compound.

... On 19 July 2001, the investigation of the [Applicant’s] disciplinary case was completed.

... On 11 October 2001, the UNDP Regional Bureau for Africa authorized the [Applicant] to return to UNDP Malabo for the purpose of packing and shipping his personal belongings to Abidjan, and to facilitate access to the documentation to reply to the disciplinary charges against him.

... On 5 November 2001, the [Applicant] travelled to Abidjan and was escorted to Apartment No. 12 where his personal belongings had been moved. At this point, the [Applicant] discovered that his personal belongings were damaged. On 15 November 2001, the [Applicant] was accompanied by a Notary Public and a UNDP staff member to assess the damage to his personal belongings. The [Applicant] submitted the signed statement from the Notary confirming the list of damaged items in large part corresponding to UNDP Malabo’s own inventory....

... By letter dated 10 April 2002, addressed [to] UNDP/New York, the [Applicant] submitted his claim for reimbursement along with the Notary statement and the second inventory list dated 15 November 2001, indicating that his assessment in United States dollars of the value of his damaged and lost personal belongings was \$78,919.00.

... On 17 April 2002, the [Applicant] was summarily dismissed. The [Applicant] appealed to the Disciplinary Committee (DC).

... In February 2003, due to the civil war in Cote d’Ivoire and for humanitarian reasons, the [Applicant] and his family were evacuated to Senegal, without their personal belongings.

... By letter dated 10 June 2003, addressed to ... UNDP, the [Applicant]’s Counsel ... referenced the [Applicant’s] prior counsel’s letter (from 14 May 2002) to the UNDP Disciplinary Committee requesting that the disciplinary matter be reviewed in accordance with Staff Rule 110.4 (c), but owing to his unsuccessful efforts to have the decision reconsidered, there has been an undue prolongation of this case. [The Applicant’s Counsel] reiterated the [Applicant’s] request that a review of his case be undertaken immediately. In the memorandum, [he] also referred to the [Applicant’s] separation documents and the separate claim for loss of his personal belongings.

... On 22 June 2003, the [Applicant] submitted a supplemental inventory list with additional information in accordance with the Administrative Instruction.

... By letter dated 27 June 2003, addressed to the [Applicant’s] Counsel, ... UNDP ... stated that because the [Applicant’s] claim for compensation of his personal belongings had not received a reply from the Bureau, [the Office of Legal and Procurement Support (OLPS)] agreed

to facilitate the submission of the [Applicant's] claim to the UN Claims Board (UNCB), in accordance with ST/AI/149/Rev. 4 of 14 April 1993, upon the receipt of further information on the value of the damaged goods.

... On 17 July 2003, the [Applicant] discussed his claim with ... OLPS/UNDP.

... By letter dated 19 July 2003, addressed to [UNDP], [the Applicant's Counsel] clarified that the [Applicant's] personal belongings were removed from his apartment, in the UNDP compound, by UNDP/Malabo and placed in storage. Furthermore, [he] stated:

'It is unclear why this was done at that time without his knowledge or consent, but it appeared to be a preliminary step in effecting his repatriation to Sierra Leone following his anticipated separation from service.

In that connection I wish to bring to your attention a similar case in which I submitted a claim to the UN Compensation Board only to be advised that unaccompanied shipments damaged in storage are not covered under ST/AI/149/Rev.4 but under the insurance coverage provided in Staff Rule 107.22...Before proceeding to submit the claim, therefore UNDP might wish to verify these procedural aspects. In the meantime, I have advised [the Applicant] to obtain whatever additional information he can on the details of his claim.'

... By letter dated 4 September 2003, addressed to [the Applicant's Counsel], ... OLPS, Bureau of Management, replied maintaining that the position of the UNCB was the appropriate one in light of the fact that the [Applicant] was still a staff member on SLWFP pending the finalization of his disciplinary case at the time of the move and therefore the move of his property to another apartment within the UNDP compound could not be considered a repatriation or a preliminary step towards repatriation.

... By letter dated 16 September 2003, addressed to [OLPS, Bureau of Management], the [Applicant's] Counsel put forth relevant facts at variance with [OLPS, Bureau of Management's] interpretation, maintaining that UNDP Malabo took steps to repatriate and separate him from service, stating in part:

'First step of my repatriation[.] In December 2000, according to the note for the file...instructions were given to move my belongings from my apartment and to be packed somewhere in room no.8[,] [i]n the compound.

First step of my separation[.] [In] January 2001, [an] Auditor ... during his investigation mission in Malabo, informed the office in advance at the beginning of his investigation that I was no longer the DRR in Malabo CO...therefore my former assistan[t] should not obey my instruction regarding the documents I request for my first reply in October 2000.

Second step of my repatriation and separation[.] In February 2001, things in my office were moved and some personal objects were sent to me in Abidjan...

Third step of my repatriation and separation[.] On 15 May 2001...the CO in coordination with HQs started to process the repatriation.

Final step of my repatriation[.] On September 26 2001...my repatriation was going on.

[In] October 2001, I was authorized to go to Malabo to pack my personal effects and to ship them to Abidjan...Again this was before the final conclusion of the investigation.'

... By memorandum dated 9 October 2003 ... [UNDP] submitted the [Applicant's] claim to the UNCB. [UNDP] stated in part '[i]n the event that the value of the claim exceeds the ceiling

allowed for such claims under the Administrative Instruction, please inform UNDP accordingly of the total value of the claim, irrespective of the ceiling, with specifics.’ [It] also noted that the [Applicant] did not submit an inventory to the Country Office of his personal belongings nor did he take out personal insurance for his belongings, as required by the Administrative Instruction.

... By letter dated 9 February 2004, addressed to the [Applicant’s] Counsel, [OLPS, Bureau of Management] attached a memorandum dated 27 January 2004, wherein the UNCB made its determination and recommendation on the [Applicant’s] claim. The UNCB’s recommendation, as approved by the Controller, reads as follows:

‘The Board noted that the staff member’s personal effects valued at \$78,919.00 were damaged as a result of high humidity and heat while in storage in the UNDP residential compound in Malabo, Equatorial Guinea, during the period from 29 September 2000 to 5 November 2001.

Recognizing that the damage to the claimant’s personal effects was due to inadequate storage at the UNDP premises, the Board agreed that the claim was compensable under the provisions of ST/AI/149/Rev.4, para. 3 (a), subject to maximum limits and standard depreciation referred to in paras. 9, 11 and 19 of the Administrative Instruction.

The Board, therefore, decided to recommend that the maximum allowable compensation, for staff members with recognized dependents at the duty station, in the amount of \$20,000.00 be granted.’

Therefore, the UNCB recommended that the [Applicant] be granted \$20,000.00, in compensation for his damaged/lost personal effects.

... By letter date[d] 13 February 2004, [the Applicant’s Counsel] advised [OLPS, Bureau of Management] that the [Applicant] would travel to New York to sign the required papers related to the UNCB’s compensation of \$20,000.00. [He] also inquired regarding ‘...what, if any, action UNDP plans to take with respect to the balance of \$58,919.00 recognized by the ABCC as being compensable but in excess of the maximum payable under the administrative instruction.’

... On 25 February 2004, the [Applicant] signed the ‘Undertaking and Assignment’ form. The [Applicant] added a handwritten amendment indicating that the \$20,000.00 represented only ‘partial payment’ of the total claim.

... In March 2004, OLPS sent an email to the UNCB requesting that it provide details of the basis of its determination of the compensable value of damages sustained to the [Applicant’s] belongings, irrespective of the limits provided under the Administrative Instruction, as initially requested in its submission to the Board. By email dated 8 March 2004, the UNCB attached a copy of the calculations worksheet in the [Applicant’s] claim. The UNCB stated that:

‘[a]fter the application of the UNCB normal limits and standard depreciation rates, the total compensation payment would have amounted to \$26,990.30.’

The Board considered these calculations before making its final decision to limit compensation to the maximum allowable under paragraph 11 of ST/AI/149/Rev. 4 (\$20,000.00 for staff member with dependants) and [n]ot to invoke unusual hardship in the case as provided by paragraph 22 of the same document, in order to authorize payment in excess of the limit.

A number of the items in the staff member’s inventory, such as the 33 antique masks valued at \$22,800.00, are considered decorative items for which the Board traditionally limits compensation. Normal depreciation also reduces the value of some of the items due to their age.’

On 31 March 2004, UNDP paid the [Applicant] the \$20,000.00 recommended by the UNCB.

... By letter dated 4 May 2004, [UNDP] pointed out that the UNCB had concluded that \$26,990.30 was the total compensable loss sustained by the [Applicant]. He noted that the UNCB decided not to invoke the 'unusual hardship' clause of the Administrative Instruction to allow for compensation in excess of the ceiling. [UNDP] underscored that:

'...there is no legal obligation for UNDP to reimburse [the Applicant] any additional funds for the damages sustained to his personal belongings above the US\$20,000 recommended by the Board. However, the Administrator has decided to reimburse [the Applicant] the amount of US\$6,990.30 representing the difference between the amount of the total claim as valued by the Board minus the amount already paid to him (i.e. \$26,990.30 - \$20,000) as an ex gratia payment, in accordance with financial rule 123.01.'

In this connection, the [Applicant] was requested to sign a Release Form enclosed with the letter, releasing and discharging UNDP from any further claim regarding damage to his personal effects.

... By letter dated 16 June 2004, [the Applicant's Counsel] inquired regarding how the UNCB arrived at the \$26,990.30 figure. Regarding the 'unusual hardship' clause, [he] stated that:

'...it was UNDP that filed the claim and apparently never asked that it be considered, although knowing that [the Applicant's] losses were well in excess of the ceiling.

Given all these considerations [the Applicant] is not prepared to release UNDP from all further claims in return for an ex gratia payment of \$6,990.30. Should UNDP be willing to consider reimbursing him the full amount of \$58,919, which incidentally excludes the value of the personal family heirlooms he lost, he would agree to a general release. If not, we would prefer to consider your letter of 14 May 2004 a final decision subject to appeal within the meaning of Staff Rule 111.2(a).'

... By letter dated 7 July 2004, [UNDP] pointed out the UNCB's authority and competence under the ST/AI/149/Rev. 4, and that it was not for the OLPS to raise the unusual hardship clause. Additionally, OLPS observed that the [Applicant] had not provided any further evidence in support of such a claim despite being requested to do so by the UNCB. OLPS maintained that [the Applicant's Counsel's] assertion that it was the role of OLPS to raise the issue of unusual hardship was without merit and not supported by the evidence. Lastly, OLPS stated that there was no legal obligation to reimburse the [Applicant] any additional amount, and that if the [Applicant] remained dissatisfied with the amount paid, he may request a review to the Secretary-General pursuant to Staff Rule 111.2(a).

... By letter dated 6 September 2004, the [Applicant] wrote [to] the Secretary-General in accordance with Staff Rule 111.2(a) and requested the review of the administrative decision communicated by OLPS on 7 July 2004. The [Applicant] claimed that the final offer of the ex gratia payment of \$6,990.30, fell far short of the losses he suffered which were in excess of \$78,919.00.

...

... By letter dated 27 September 2004, the Chief, Administrative Law Unit ... acknowledged receipt of the [Applicant's] request for administrative review.

... By letter dated 29 September 2004, [the Applicant's Counsel] inquired regarding:

'...whether the Claims Board is prepared to consider a request from [the Applicant] for reconsideration of his request for compensation following its decision at its 313th meeting

of 18 December 2003...[s]pecifically, [the Applicant] is requesting the Claims Board to revise its recommendation in view of the unusual hardship the loss of his personal effects has caused, in accordance with paragraph 22 of ST/AI/149/Rev. 4. If reconsideration is not possible, kindly advise where an appeal of the decision may be made, either the Joint Appeals Board or the Administrative Tribunal.’

... By letter dated 15 November 2004, [the Department of Management (DM)] stated that the UNCB ‘...will require the submission of substantial new information with the corresponding supporting evidence in order to reconsider the case’. [The DM] maintained that the UNCB had carefully considered the [Applicant’s] claim, and that, despite the failure of the [Applicant] to submit the detailed inventory of personal effects upon arrival at the duty station as required, the UNCB had accepted the [Applicant’s] inventory using the amount provided as the value of the damaged goods. In its explanation in calculating the compensable loss, the UNCB noted that, using the purchase dates provided by the [Applicant], it applied the standard rate of depreciation applicable to all cases before the UNCB, reducing the value of the [Applicant’s] claim by \$10,928.70. The UNCB also noted that the [Applicant] listed a ‘great number’ of strictly decorative items for which the UNCB consistently limits compensation. Therefore, following the application of all relevant limits and depreciation, the UNCB arrived at a total value for the claim of \$26,990.30, and decided to recommend the maximum allowable compensation for staff members with recognized dependents, \$20,000.00.

... On 17 May 2005, a Settlement Agreement was reached between the [Applicant] and UNDP to rescind the [Applicant’s] dismissal and place him on special leave without pay, retroactively, from 17 April 2002 to 17 May 2005. The Settlement Agreement provided for the mutual release from all claims and the [Applicant] agreed to his separation from service.

...

... On 4 January 2005, the [Applicant] filed his Statement of Appeal.”

The JAB submitted its report on 11 September 2006. Its considerations and recommendation read, in part, as follows:

“Considerations

50. The Panel first considered the preliminary issues of competence and receivability. The Panel found itself competent to consider this case and found also that this appeal complied with the time-limits set forth in Staff Rule 111.2 (a). The Panel noted that the Appellant was notified of his suspension from duty and placed on SLWFP pending the outcome of a disciplinary investigation effective 28 September 2000. The Panel further noted that the Appellant was summarily dismissed on 17 April 2002 but after the Appellant’s appeal, the dismissal was rescinded and the Appellant was issued a Letter of Reprimand. On 17 May 2005, the Appellant and the Respondent signed a Settlement Agreement wherein the Appellant’s dismissal was rescinded and he was placed on special leave without pay, retroactively from 17 April 2002 to 17 May 2005. The Panel was mindful that the Settlement Agreement provided a mutual release from all claims and the Appellant agreed to his separation from the Organization. The Panel concluded that the Appellant remained a staff member while he was on special leave and pending the outcome of the disciplinary investigation. Accordingly, the Panel further concluded that ST/AI/149/Rev. 4 is the applicable Administrative Instruction for review of the Appellant’s claim and that the present Appeal is receivable by the JAB.

51. The Panel acknowledged that the central issues in this case are whether the Appellant was informed of UNDP’s decision to relocate his personal belongings, whether the Respondent was liable for the loss and/or damage to the Appellant’s personal belongings, and whether the

Appellant was properly compensated for said loss. The Panel recognized that its review of due process considerations is restricted under Rule 111.2 (k) which prohibits the JAB from substituting its judgment for that of the Administration on the substantive question of efficiency.

52. The Panel examined the issues in turn. First, the Panel considered whether the Appellant was informed of UNDP's decision to relocate his personal belongings from apartments 3 and 8 to apartment 12 within the UNDP Malabo compound. The Panel reviewed the contentions of the parties and noted that the Respondent acknowledged that on 22 December 2000 he attempted to remove the Appellant's personal belongings but this attempt was 'unsuccessful' because the items were perishable products, could be easily damaged and should not be warehoused. The Panel further noted that the Appellant's personal effects were not removed on 22 December 2000.

53. The Panel reviewed all the annexes filed by the Appellant regarding this first point. [An] email dated 26 April 2001 ... stated that UNDP Malabo needed to make use of the two apartments occupied by the Appellant because of the need to house UN travelers/visitors and the scarcity of hotel rooms in Malabo. [It] considered the "...danger of damage..." to the Appellant's personal belongings. In the email dated 16 May 2001, [UNDP] stated '[a]s per our telecon I would like to inform you that the Bureau's Management [sic] has decided that your personal effects in Malabo should be packed by the UNDP's office and send [sic] to a storage pending the outcome of your administrative situation.'

54. The Panel considered the Appellant's response in his email dated 18 May 2001. The Panel found that the Appellant was aware that UNDP sealed off his two apartments while the disciplinary investigation and rebuttal were underway, and that they intended to relocate his personal belongings. The Panel further found that the Appellant did not contest UNDP's decision to relocate his personal belongings. The Panel expressed its reservations regarding whether the Appellant would have succeeded with such a challenge given the nature of UNDP's need for available housing.

55. Second, the Panel considered whether the Respondent was liable for the loss and/or damage to the Appellant's personal belongings. The Panel examined the annexes submitted by the Appellant wherein the Appellant notified UNDP Malabo of the moisture problem in the compound and the possibility of damage to his personal belongings if they were not cared after. The Panel was mindful and expressed concern that the Appellant's call for action was not heeded by the Respondent. The Panel noted that the Respondent acknowledged that there was a loss and that he bore the responsibility for said loss. Without more, the Panel concluded that the Respondent was liable for the loss and/or damage to the Appellant's personal effects.

56. Third, the Panel considered whether the Appellant was properly compensated for his loss. The Panel acknowledged that before they could rightly answer this question, they needed to determine the Appellant's status within the Organization after 28 September 2000, the day the Appellant was placed on SLWFP. The Panel reviewed the Appellant's claims that UNDP Malabo took steps to repatriate and/or separate him from service. The Panel concluded that the Appellant remained a staff member while on special leave and while his disciplinary case was under investigation. Therefore, the Panel further concluded that the Appellant's claim for compensation was properly before the UNCB.

57. The Panel noted that under the UNCB guidelines, the operative Administrative Instruction is ST/AI/149/Rev. 4. The Panel further noted that the Appellant was informed of the importance and the necessity of acquiring personal insurance to insure his personal effects, such as the face masks, separate from items compensable under the Administrative Instruction. The Panel found that upon his arrival at the UNDP Malabo compound, the Appellant did not buy personal insurance or submit an inventory list of his personal belongings, as required.

58. The Panel was mindful that once the Appellant's personal belongings were lost and/or damaged, the Appellant submitted two separate inventory listings under which the UNCB

reviewed the claim and allotted the maximum compensable amount of \$20,000.00. The Panel examined the Appellant's contentions and noted that the Appellant did not submit any receipts or other documentation to verify his claim for compensation for the initial claim of \$78,919.00 or the subsequent claim of \$200,000.00. Although the Panel expressed their understanding of the personal and emotional significance of the Appellant's loss and the Respondent's negligence, the Panel concluded that the Appellant was adequately compensated pursuant to the Administrative Instruction.

59. The Panel considered the Appellant's claim of financial and emotional hardship but noted that the Appellant did not submit any documentation to substantiate either. Additionally, the Panel was perplexed by the fact that the Appellant did not submit additional documentation to substantiate his claim before the UNCB for reconsideration, as proposed by the Respondent.

60. The Panel noted the Respondent's delay in processing the Appellant's claim for compensation. Nonetheless, the Panel concluded that the delay was not in bad faith or intentional to warrant additional compensation.

61. The Panel was mindful that the Appellant declined the ex gratia payment of \$6,990.30, representing the difference between the amount of the total claim as valued by the UNCB minus the amount already paid (\$20,000.00) to the Appellant. The Panel encourages the Respondent to put this offer back on the table for the Appellant's consideration.

62. Furthermore, the Panel found no evidence that the Appellant's disciplinary case in any way tainted the Appellant's claim for compensation or that the Appellant's due process rights were violated.

63. In light of the foregoing, the Panel finds that the Respondent did not violate the Appellant's due process rights by relocating his personal belongings within the UNDP Malabo compound or due to the delay in processing the Appellant's claim for compensation. The UNCB was the appropriate body to decide on the Appellant's claim and that the Appellant was adequately compensated for his loss and/or damages. Lastly, there was no evidence of bias or prejudice in taking the decision to relocate the Appellant's personal belongings or to award him the maximum amount allowable under the Administrative Instruction.

Recommendation

64. In light of the foregoing, the Panel unanimously found that the Respondent put forth a reasonable basis for the need to relocate the Appellant's personal belongings within the UNDP Malabo compound, that the Appellant's claim for compensation was properly before the UNCB and that the Appellant was adequately compensated for the loss and/or damage of his personal belongings, and thus unanimously concluded that the Appellant's due process rights were not violated. It therefore unanimously decided to make no recommendation in support of the appeal. The Panel rejected all other claims."

On 28 December 2006, the Department of Management transmitted a copy of the report to the Applicant and informed him as follows:

"The Secretary-General regrets to inform you that he accepts the findings and conclusions of the JAB and, in accordance with its unanimous decision to make no recommendation, has decided to take no further action in this case."

On 22 June 2007, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The findings of the JAB were based on errors of law and fact.
2. The compensation provided by the Respondent is inadequate in light of the gross negligence and excessive delay of the Respondent.
3. The Applicant's procedural rights were violated.

Whereas the Respondent's principal contentions are:

1. The Applicant's claim for compensation for damage to his personal effects was properly processed under ST/AI/149/Rev.4. His claim was not covered by staff rule 107.22 as the Applicant remained a staff member and his personal effects were not damaged in transit as an unaccompanied shipment in connection with repatriation. The Applicant was put on notice that his personal effects were being moved and raised no objection.
2. There was no unreasonable delay in processing the Applicant's claim for compensation, other than the delay caused by the Applicant.
3. The Applicant has been adequately compensated.
4. The Applicant's due process rights were not violated.
5. There is no justification for an award of legal fees and related expenses.

The Tribunal, having deliberated from 9 July to 31 July 2009, now pronounces the following Judgement:

I. The Applicant joined the United Nations in 1987 with the UNDP. From November 1997 to October 1999, the Applicant served as Deputy Resident Representative in the Democratic Republic of the Congo. From November 1999 to April 2000, the Applicant was detailed to the UNDP office in Malabo, Equatorial Guinea. In April 2000, he was appointed Deputy Resident Representative for UNDP Malabo. In anticipation of his family's arrival at his duty station in Malabo, the Applicant requested a larger apartment in the UNDP residential compound and in September 2000 began moving a portion of his personal belongings from his original apartment (Apartment No. 3) to a new apartment (Apartment No. 8). On 29 September 2000, while on a 24-hour trip to Abidjan, Côte d'Ivoire, in order to bring his family back to Malabo with him, he was informed that, effective 28 September 2000, he would be placed on special leave with full pay (SLWFP), as a disciplinary investigation had been initiated against him. UNDP then informed him that he could not return to his duty station in Malabo and would have to remain in Abidjan.

II. In December 2000, while the investigation was under way, the UNDP office in Malabo made an initial attempt to remove the Applicant's personal belongings to storage from Apartments Nos. 3 and 8, as the Administration needed housing for staff members of the United Nations. However, in a note to the file dated 22 December 2000, the Administration noted its concern about moving the Applicant's goods, stating

in relevant part: "...we have been unable to transfer the effects (clothing, pots and pans, food from the freezer, etc) which [the Applicant] left in [Apartment] #3 to [Apartment] #8, given that these are things that can be easily damaged, and which should not be warehoused." Therefore, the UNDP Administration did not immediately move his belongings as planned. On 16 May 2001, again, because it needed the space, the UNDP Administration informed the Applicant by e-mail that UNDP Malabo was going to pack up his personal belongings and store them pending the outcome of the disciplinary case against him. By e-mail dated 18 May 2001, the Applicant informed the Administration of his concerns that some of his personal effects might be damaged if they were not stored under proper conditions. The Administration nonetheless went ahead with moving the Applicant's personal belongings which were all stored in a third apartment, No. 12, in the UNDP residential compound.

III. On 19 July 2001, the investigation of the disciplinary case was completed. On 11 October 2001, after the Applicant had formulated several requests to this effect, the UNDP Regional Bureau for Africa authorized the Applicant to return to UNDP Malabo for the purpose of gathering up his personal belongings, and to have access to the documentation enabling him to respond to the disciplinary charges against him. The Applicant made this trip on 5 November 2001, at which time he discovered that his personal belongings had been damaged by the heat and humidity in Apartment No. 12. On 15 November 2001, accompanied by a Notary Public and a UNDP staff member, the Applicant drew up a list of damaged items. Based on his findings, on 10 April 2002, the Applicant submitted his claim to the Office of Human Resources for Africa to be reimbursed for the damage caused by the improper storage of his belongings, assessed at US\$ 78,919.00.

IV. On 17 April 2002, the Applicant was summarily dismissed for disciplinary reasons. The investigation alleged improper use by the Applicant of his office telephone. This decision, however, was reviewed by the UNDP Disciplinary Committee, which issued a decision more favourable to the Applicant. The Disciplinary Committee, in fact, recommended that his dismissal be rescinded and that he be issued a Letter of Reprimand instead. The Applicant and UNDP ultimately signed a Settlement Agreement on 17 May 2005, providing for mutual release from all claims — except for those which the Applicant was entitled to submit regarding the damage to his personal belongings — and in which the Applicant agreed to his separation from service.

V. The Applicant had received no response from the Administration regarding his claim for reimbursement. The Office of Legal and Procurement Support offered its assistance, on 27 June 2003, to the Applicant, on an exceptional basis, upon the receipt of further information on the damaged goods, in accordance with administrative instruction ST/AI/149/Rev.4 regarding compensation for loss of or damage to personal effects attributable to service. Responding on 19 July 2003, the Applicant's counsel informed the Office of Legal and Procurement Support that in view of the Applicant's situation, which was

comparable to separation from service and repatriation of his belongings, the claim for reimbursement should fall under staff rule 107.22 on insurance coverage by the Administration for unaccompanied shipments in connection with repatriation. The UNDP Administration, while maintaining that it was indeed appropriate to apply administrative instruction ST/AI/149/Rev.4, nonetheless submitted the claim for reimbursement to the UNCB.

VI. In a memorandum of 27 January 2004, the UNCB recommended that the Applicant should be granted the maximum allowable compensation under the provisions of administrative instruction ST/AI/149/Rev.4, in the amount of US\$ 20,000.00, in respect of the circumstances in which his personal effects were damaged because of inadequate storage by the Administration. In March 2004, in an e-mail to the Office of Legal and Procurement Support providing details of its calculations, the Claims Board stated that in accordance with its methods of appraising belongings, and in particular, after calculating the depreciation of each of the Applicant's belongings, the Board's total assessment was US\$ 26,990.30, and that the Board had decided to grant an additional ex gratia payment of US\$ 6,990.30. This additional ex gratia compensation, however, was declined by the Applicant.

VII. After contesting the Claims Board's decision not to invoke paragraph 22 of administrative instruction ST/AI/149/Rev.4, which would have allowed it to exceed the ceiling for compensation in a case of "unusual hardship", and after the Administration responded that he should have requested the Claims Board to apply that provision, the Applicant wrote to the Secretary-General to request an administrative review under staff rule 111.2 (a). As the decision of the Secretary-General was not in his favour, he filed an appeal with the JAB on 4 January 2005.

VIII. The JAB issued its report on 11 September 2006. With regard to the Applicant's allegations, it believed that the issues to be dealt with were as follows: whether the Applicant had been duly informed of the UNDP decision to relocate his personal belongings to storage in a location other than the two apartments he occupied; whether the UNDP Administration was liable for the damage to the Applicant's personal effects; and lastly, whether the Applicant had been properly compensated. To respond to these issues, the JAB considered these submissions in term.

IX. First, it considered that the Applicant had been informed of the UNDP decision to relocate his personal belongings. The JAB referred to two e-mails, one dated 26 April 2001 and the other dated 16 May 2001, informing the Applicant that his personal belongings would be packed up and sent to another location pending the outcome of his administrative situation. The JAB also held that the Applicant's reply in his e-mail of 18 May 2001 confirmed that he had been informed of the situation and had not objected to it. Second, the JAB observed that the Administration had acknowledged the occurrence of damage and should bear responsibility for it. Third, the JAB considered that even though the Applicant had been placed on

special leave with full pay from 28 September 2000, he was still in the service of the Organization and remained a staff member. Hence, the Applicant's claim had been properly brought before the UNCB and it was indeed appropriate to apply administrative instruction ST/AI/149/Rev.4.

X. As for determining whether the compensation paid to the Applicant was appropriate, the JAB found that while the Applicant had submitted two different assessments, one estimating damages at US\$ 78,919.00 and the other at US\$100,000.00, the Applicant had not provided any substantiation for those assessments. The JAB had a similar view with regard to the allegation that the hardship clause should have been invoked by the Claims Board: the Applicant had not substantiated the need to do so. The JAB further found that the delays in processing the Applicant's claim for compensation had not been in bad faith or intentional on the Administration's part. Lastly, the JAB found no evidence that the Applicant's disciplinary case had in any way tainted the Administration's handling of his case.

XI. The JAB therefore decided to make no recommendation in support of the Applicant's appeal and rejected all his claims. The Secretary-General accepted those recommendations. The Applicant then decided to appeal to the Tribunal. He is contesting the grounds on which the JAB made its recommendations, alleging that he was not properly compensated and that the Administration's attitude towards the issue of storing his personal belongings and awarding compensation for the damage that had occurred, once it was determined, violated its obligations concerning the duty of care, good governance, and fair treatment.

XII. The Tribunal will now set out the Applicant's arguments in more detail. The Applicant claims, first of all, that, contrary to the views of the Administration and then the JAB, his situation fell under staff rule 107.22 and not ST/AI/149/Rev.4. He alleges that because he was placed on special leave with full pay, he could not have been considered to be employed, and thus the relocation of his personal belongings could not be "attributable to the performance of his official duties", as provided in the Administrative Instruction. The Applicant further alleges that the Administration began packing up his personal belongings in preparation for relocating them to his main domicile in Abidjan. In fact, he alleges, the Administration was prejudging the outcome of the disciplinary case. Relocating his personal belongings was a preliminary step in his repatriation. The Applicant further believes that the Administration persisted in invoking the application of ST/AI/149/Rev.4 because it provided a limitation on liability, which would not have been allowed under staff rule 107.22.

XIII. The Applicant further maintains that the JAB erred in fact in considering that he had consented to the relocation of his personal affairs and in refusing to recognize — on the grounds that the Applicant had not submitted the necessary information — that the hardship clause contained in paragraph 22 of ST/AI/149/Rev.4 should be applied.

XIV. The Applicant also claims that the Administration violated a number of his rights by allowing his situation to remain pending for several months. He alleges that the damage to his personal belongings is directly attributable to the Administration's particularly long delays and its questionable attitude in conducting the disciplinary case. The Applicant criticizes, in particular, the fact that he was forced to remain at his domicile in Abidjan for several months without being able to return to Malabo to collect some of his belongings. The Applicant further alleges that he had properly submitted a claim for reimbursement to the Administration on 10 April 2002 but that the Administration had not taken any action until 9 October 2003. The Applicant contends that the Administration's failure to act promptly constitutes a violation of his rights to due process and fair treatment.

XV. The Applicant submits that the compensation awarded by the Administration and confirmed by the JAB is not commensurate with the injury he sustained. He is now claiming compensation in the amount of \$100,000 on the grounds that it reflected the value of his personal belongings and that the damage suffered was the result of negligence on the part of the Administration. He further submits that he had been subjected to anxiety and extreme uncertainty as a result of the situation and that, since the Administration breached its obligation concerning the duty of care, he is entitled to additional compensation in the amount of \$100,000 for the moral damages he suffered. The Applicant further submits that because of the exceptional nature of the circumstances surrounding the case, he should be reimbursed for his legal expenses.

XVI. In light of the foregoing contentions, the Applicant requests the Tribunal to find that:

- The Secretary-General's decision to accept the recommendations of the JAB should be rescinded;
- The JAB's findings are based on errors of law and fact;
- The compensation decided by the Administration is inadequate in light of the gross negligence of the Administration and the undue delay in handling his claim;
- Compensation in the amount of \$100,000 should be awarded to the Applicant for the material damages he suffered and that compensation in the amount of \$100,000 should be awarded to him for the moral damages he suffered;
- The Applicant's legal expenses should be reimbursed.

XVII. The Respondent submits that the recommendations of the JAB are justified. The Respondent insists that the Administration did not show any bad faith in processing the Applicant's claims. While the interval between the time that the damage to the Applicant's personal effects was determined and the time that the compensation process was initiated appears to be long, the Respondent stresses that such delay is attributable to the conduct of the Applicant, who was late in reacting and failed to submit the appropriate documentation for the processing of the compensation. The Respondent further submits that the

compensation awarded to the Applicant is adequate. The Applicant is not entitled to any additional compensation because of the negligence of the Administration as this would amount to double compensation for the same damage. As to invoking the “unusual hardship” clause, the Respondent notes that the Applicant had failed to properly file a claim for hardship before the Claims Board and had failed to prove his entitlement.

XVIII. The instant case before the Tribunal is complex because of the difficulty in untangling the reasons and circumstances surrounding the damage to the personal effects of the Applicant and the disciplinary case simultaneously brought against him; with respect to the latter, the Tribunal lacks jurisdiction but understands that it is the Applicant’s view that the case had been improperly handled and might have affected the Administration’s handling of his property in Malabo. However the Tribunal notes that the receivable claims before it relate solely to the compensation procedure instituted by the Administration to cover the damage to the Applicant’s personal effects resulting from inadequate storage.

XIX. The Tribunal must now clarify, with regard to the respective positions of the parties, the substance of the issues before it. First, it must ascertain whether the Administration initiated compensation for the losses suffered by the Applicant by applying the appropriate rules and regulations. In the affirmative, the Tribunal would then have to determine if the compensation awarded was adequate. Should the Administration not have initiated compensation, the Tribunal would have to identify the appropriate legal basis which might give rise to the liability of the Administration in the occurrence of the damage and the appropriate compensation. Finally, it would have to determine whether the Administration handled the Applicant’s claim for compensation in a manner that violated his rights.

XX. With respect to the first question as to whether the JAB properly identified the legal basis for the compensation to which the Applicant was entitled, the Tribunal recalls paragraph 1 of administrative instruction ST/AI/149/Rev.4:

“Staff rules 106.5, 206.6 and 306.4 provide that staff members shall be entitled, within the limits and under the terms and conditions established by the Secretary-General, to reasonable compensation in the event of the loss of or damage to their personal effects, determined to be directly attributable to the performance of official duties on behalf of the United Nations. The purpose of the present instruction is to define the terms, conditions and limits governing such compensation and to set forth the procedure for the submission and examination of claims in connection with such loss or damage.”

On the other hand, staff rule 107.22 provides:

“(a) Staff members shall not be reimbursed for the cost of personal accident insurance or of insurance of accompanied personal luggage. However, compensation may be paid in respect of loss or damage to accompanied personal baggage, in accordance with such arrangements as may be in force under rule 106.5.

(b) In the case of unaccompanied shipments authorized under rule 107.21, except on home leave, family visit or education grant travel, insurance coverage will be provided by the Organization up to a maximum of ...”

XXI. The situations covered by these provisions are quite different. The Applicant seeks the application of staff rule 107.22 as he contends that the Administration had proceeded to the repatriation of his personal effects in anticipation of his separation. The Tribunal notes that at the time his personal effects were moved and stored in Apartment No. 12, the Applicant was still a staff member of the Organization. He was indeed on SLWFP and therefore performing no official duties. However, his status as staff member remained unchanged. In this connection, the Applicant cites a case similar to his where the Administration had specifically informed the staff member concerned that the claim for compensation for losses he had incurred during the shipment of his personal effects from his duty station to his home country was covered under staff rule 107.22. The Tribunal notes, however, that the case in question involved the repatriation of personal effects of someone who was no longer a staff member of the Organization. Clearly, the Applicant’s situation is altogether different. The Applicant further contends that it is clear from some of the correspondence addressed to him that the consolidation of his personal effects at one location constituted a preliminary step in the repatriation of his personal effects prior to his separation. This is where the Applicant’s claims are most closely linked to the circumstances in which the disciplinary investigation was conducted. However, the Tribunal finds that the Applicant has failed to prove that the Administration proceeded to consolidate his personal effects and prejudged the outcome of the disciplinary investigation. A fax dated 26 July 2001 from the UNDP Resident Representative at Malabo addressed to the UNDP Office of Human Resources in New York dealt with the shipment of the Applicant’s personal effects to Abidjan. However, this is the only document before the Tribunal which makes reference to such repatriation. The Tribunal further notes that it is clear from the record that the Applicant’s return to UNDP Malabo was being considered and that it had been decided to store his personal effects in one apartment pending a determination of his situation as a result of the disciplinary investigation. In any event, the Administration had repeatedly explained that it needed the Applicant’s apartments to accommodate other staff members of UNDP Malabo. Thus the Administration had a legitimate reason for moving his belongings, and there is no reason to doubt that until his actual termination, the Applicant had always been considered as a staff member of the Organization. The Tribunal finds that staff rule 107.22 could not apply to the Applicant’s case.

XXII. However, the Tribunal is also not convinced that the provisions of administrative instruction ST/AI/149/Rev.4 apply to the Applicant’s situation. This Administrative Instruction provides for staff members to be compensated in the event of loss of or damage to their personal effects which is directly attributable to “the performance of official duties [by the staff member] on behalf of the United Nations”. It should be noted that at the time when the damage occurred, the Applicant was not performing any official duties. As previously emphasized by the Tribunal, he was still a staff member. However, his

placement on special leave by definition implied that he was no longer performing any official duties. Moreover, the circumstances in which the damage occurred were entirely unrelated to the performance of any of his official duties. The damage was not related to any situation covered by the administrative instruction which would activate the compensation mechanism: the damage to the personnel effects of the Applicant was not due to an “incident” which had occurred “while the staff member was performing official duties on behalf of the United Nations” (the hypothetical case described in paragraph 3 (a) of the administrative instruction); nor was the damage due to the presence of the Applicant in an area considered to be hazardous (as described in paragraph 3 (b) of the administrative instruction); nor was the damage caused by an incident which occurred while the Applicant was traveling (as described in paragraph 3 (c) of the administrative instruction). The Applicant’s situation is unique because he was not himself present at the place where the damage occurred and he had been placed in a situation where he could not perform any official duties until further notice. The Tribunal therefore is of the view that the JAB and then the Secretary-General were mistaken in considering that the Applicant’s situation was covered by administrative instruction ST/AI/149/Rev.4.

XXIII. In the opinion of the Tribunal, compensation for the damage suffered by the Applicant should be provided for on a different basis. It is clear, and the Respondent does not disagree, that the damage occurred because of the action of the Administration. More specifically, it is clear that the damage occurred because of the Administration’s negligence. Indeed, the Administration of UNDP was perfectly aware that relocation of the Applicant’s personal effects might result in damage to those items. When the Administration had first considered the possibility of the relocation in December 2000, it had abandoned the idea precisely because it recognized that damage to the Applicant’s goods would likely occur. This is reflected in the internal note to the file dated 22 December 2000. When the Administration informed the Applicant that his effects would soon be relocated to Apartment No. 12, the Applicant warned that the relocation would very likely cause damage to his property. Even if the Administration was obliged to carry out the relocation in order to be able to make use of the two apartments occupied by the Applicant, better storage conditions should have been provided. Moreover, the Applicant had requested permission on a number of occasions to go to Malabo to collect his belongings. Several of his requests had gone unanswered and it was only in November 2001, when it was too late, that the Applicant received authorization to return to Malabo. The Administration could have prevented the damage from occurring by authorizing the Applicant to return to collect his personal effects at an earlier date. Neither the disciplinary proceedings that were under way against the Applicant nor his placement on special leave with full pay would have prevented him from returning to Malabo, at least to supervise the relocation and storage of his property. The Applicant challenges this action on the part of the Administration, citing a violation of the Administration’s duty of care obligation. However, as the Respondent correctly states, this duty of care obligation refers to protection of the person and in particular implies an obligation not to place staff members in a dangerous situation (See, in this connection, Judgement No. 1204 (2005), paras. XIV-XVI).

Contrary to the Applicant's belief, the duty of care obligation cannot be cited when the damage has been inflicted on a staff member's property. However, the Administration has a broad duty to act with care and consideration with regard to the members of its staff and their property. The Tribunal has previously found that this obligation was violated when the Administration had not conducted disciplinary proceedings properly (Judgement No. 559, *Vitovski* (1992), para. XVII) or when it acted in a certain way in response to political pressure (Judgement No. 1275 (2005), para. XIII). This obligation also requires the Administration to take all the necessary precautions when it decides to relocate the personal effects of one of its staff members from one place to another, especially when it is not physically possible for the staff member to carry out the relocation himself because he is kept away from his duty station. This is particularly true when the staff member is kept away and when the duration lies solely within the discretion of the Administration. In the present case, the Administration has therefore failed to act with care and consideration with regard to the Applicant and his property. For that reason, the Applicant has the right to receive compensation for the material losses he has suffered and also for the moral damage caused by the violation of his right to be treated with respect and to be compensated within a reasonable period of time.

XXIV. With regard to compensation for the material damage, the Tribunal cannot itself carry out a new assessment of the damage caused. Nevertheless, the Tribunal cannot accept the Applicant's claim for US\$ 100,000 assessment, as the Applicant has not provided sufficient justification to the JAB and the Tribunal. However, the Tribunal considers the assessment done by the UNCB, insofar as it assesses the purely monetary value of the Applicant's property, to be perfectly reasonable. The Tribunal estimates that, by analogy that evaluation could serve as a basis for calculating the amount of compensation that should be paid to the Applicant.

XXV. With regard to moral damages, the Tribunal takes account of the fact that the Applicant's effects were of particular importance to him because they included items of great cultural and historical value, many of which had belonged to his family. In his Application to the Tribunal, he refers to "priceless family heirlooms". In particular, there was a collection of tribal masks to which he was greatly attached. The Applicant has repeatedly emphasized this point and the Tribunal cannot ignore it, as the damage occurred because of the negligence of the Administration. In comparison with other cases where the Tribunal has awarded compensation for damage that occurred owing to the Administration's violation of its obligation to treat its staff with care and consideration, and taking into account the emotional value that some of the damaged items had for the Applicant, the Tribunal considers that additional compensation of US\$ 20,000.00 should be paid to the Applicant. Moreover, as the Respondent has previously offered an ex gratia payment of US\$ 6,990.30 suggested by the Claims Board, the additional compensation should amount to US\$ 26,990.30.

XXVI. The Tribunal will now consider the way in which the Administration handled the Applicant's request for compensation. This review should be carried out independently of the fact that the Administration did not make the offer of compensation on the proper grounds. The Applicant claims that it was only after excessive delays that he has received compensation which he considers to be insufficient, and that therefore the Administration violated his right to due process and his right to fair treatment. The Tribunal notes that the interval between the time that the Applicant reported the damage caused to his personal effects, in November 2001, and the time that the Applicant was actually compensated in 2005, was extremely long. However, that length of time does not in any way appear to be intentional on the part of the Administration. It is true that there was no response to the first request for reimbursement that the Applicant submitted to the Office of Human Resources on 10 April 2002. However, it should be noted that the Applicant himself had waited for several months before making that request. Moreover, in view of the lack of a response, the Office of Legal and Procurement Support agreed, on an exceptional basis, to assist the Applicant with the various actions to be taken in order to obtain compensation for the damage suffered. The reimbursement procedure was subsequently delayed for reasons which were in no way the fault of the Administration. On a number of occasions, the Applicant was requested to provide additional information about the damaged items, and the Applicant provided insufficient information. Under those circumstances, the Tribunal finds that the Administration has not violated any of the Applicant's procedural rights and that consequently rejects the Applicant's claims in that respect.

XXVII. The Tribunal finally comes to consider the Applicant's request to be reimbursed for legal fees. The Applicant's claims in that respect amount to US\$ 10,500.00. He justifies his request by noting that the complexity of the dispute required the services of experienced counsel. The Tribunal should recall here that in line with its consistent jurisprudence, the Tribunal does not respond favourably to such requests except in extremely rare and exceptional cases, when the facts of the case have made the Tribunal's proceedings much more difficult than usual (Judgement No. 237, *Powell* (1979), para. XXIX; Judgement No. 1041, *Conde Estua* (2001), para. XIII) or when the Applicant has been encouraged by the Administration to submit an application to the Tribunal (Judgement No. 665, *Gonzalez de German* (1994), para. XI). In the present case, the Tribunal does not see any exceptional circumstance that would require it to order expenses to be awarded. This request is therefore rejected.

XXVIII. In view of the foregoing, the Tribunal:

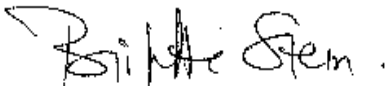
1. Declares that the JAB was incorrect in considering the situation of the Applicant to be covered by administrative instruction ST/AI/149/Rev.4;
2. Declares that the Administration did not fulfill its obligation to treat the personal effects of the Staff Member with care and consideration;

3. Orders the Respondent to pay compensation of US\$26,990.00 for the material and moral damages suffered owing to the loss of the Applicant's personal effects, payable at eight per cent per annum as from 90 days from the date of distribution of this Judgement until payment is effected; and,
4. Rejects all other claims.

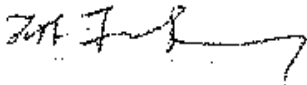
(Signatures)



Jacqueline R. **Scott**
First Vice-President



Brigitte **Stern**
Member



Goh Joon Seng
Member

Geneva, 31 July 2009



Tamara **Shockley**
Executive Secretary