



Administrative Tribunal

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23 December 2009

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1491

Case No. 1562

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Sir Bob Hepple, First Vice-President, presiding; Mr. Goh Joon Seng, Second Vice-President; Ms. Brigitte Stern;

Whereas, on 11 August 2007, a former staff member of the United Nations filed an application that did not fulfill all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 28 January 2008, the Applicant after making the necessary corrections, filed an Application containing pleas which read, in part, as follows:

“II. Pleas

...

May it please the Tribunal:

- To declare the present application receivable; and
- To order the Respondent [Department of Economic and Social Affairs (DESA)] to pay the amounts due, the late-payment charges and compensation for moral damage.

I. Confirmation of payments received by the Applicant

The Applicant hereby attests and confirms that, following the intervention of the Joint Appeals Board [JAB], he has received the following payments:

-Claim 3: airline ticket: €282.68 on 27 September 2006 (file closed);

-Claim 2: personal effects: €4,598.92 on 2 February 2007;

-Claim 1: Monthly Evacuation Allowance (MEA) for 1994: €7,075.08 on 19 February 2007.

II. Claims 1 and 2. The Applicant's contentions regarding the exchange rate (personal effects and MEA) and interest on MEA

The Applicant claims reimbursement for the amount in euros, to the date of payment, representing the loss owing to the US dollar/French Franc/euro exchange rate applied on the payment date:

-two hundred thirty-nine euros and thirty-one cents (€239.31) plus interest for MEA/1994;

-one thousand three hundred twenty-one euros and fifty-eight cents (€1,321.58) for personal effects.

Claim 4. The Applicant claims reimbursement for two months' security deposit, i.e. nine hundred fourteen euros and sixty-nine cents (CFAF 300,000 x 2 = CFAF 600,000 = 6,000 FF = €914.69).

Claim 5. The Applicant claims reimbursement of real, significant and justified costs for files, translation, counsel, telephone and correspondence, i.e. one thousand seven hundred eighty euros (€1,780).

Claims 6 and 7. The Applicant claims compensation for loss due to currency exchange owing to the delay in processing the files:

a) Final Pay: one thousand nine hundred seventy-three euros and ninety-three cents = €1,973.93;

b) Delayed pension payment: three thousand seven hundred sixty-two euros and thirty-nine cents = €3,762.39.

Claim 8. The Applicant claims payment of compensation for moral damages suffered for over twelve years, i.e. twenty thousand euros (€20,000) (or 4 dollars per day of delay).

Without any prejudice.”

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 June 2008, and once thereafter until 24 July;

Whereas the Respondent filed his Answer on 10 July 2008;

Whereas the Applicant filed Written Observations on 29 July 2008;

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] was intermittently deployed under 200-series appointments between 1989 and 2002. He last served as an Expert at the L-6 level with DESA in Bangui, Central African Republic.

Summary of Facts

... On 24 November 2005, [the Applicant] submitted a request for administrative review to the Secretary-General regarding non-reimbursement of a number of claims for which he had been requesting follow-up since 1994.

... On 24 January 2006, [the Applicant] submitted a statement of appeal to the JAB.

....”

The JAB adopted its report on 24 May 2007. Its considerations, conclusion, and recommendation read, in part, as follows:

“Contentions and Panel Considerations

9. The basic questions as to Appellant’s eligibility for the entitlements are not at issue. The following outlines the position of the parties on processing for each entitlement, followed by the considerations of the Panel on each item.

Item 1: Payment of additional Monthly Evacuation Allowance (MEA) -

Contentions:

Appellant: Appellant claims MEA for the period 12 May to 27 August 1994 following evacuation from Kigali on 11 April 1994 until his separation from the Organization on 27 August 1994. Specifically, he claims MEA from 12 May through 11 June 1994 at the Nairobi rate, and from 12 June to 27 August at the Algiers rate, as his designated place of home leave, and from 12 May through 27 August at the Algiers rate for his wife. Appellant claims the total amount owed inclusive of interest is \$9,181.50, or €7,314.00 at the rate of exchange on 27 August 1994. He confirms having received €7075,08 on 19 February 2007, which amounted to \$7,966.00.

...

Respondent: Respondent contends that Appellant was entitled to MEA for himself and his spouse for the period 11 April to 27 August 1994. MEA for this period could not be processed due to difficulties in obtaining information from UNDP. The claim for the period 12 May to 27 August 1994 for himself and his wife has been submitted.

...

Considerations

The Panel notes that the dollar amount is not at issue: the parties stipulate that the staff member was owed \$9,181.50. The question to be resolved is whether the staff member was entitled to payment in euros at the exchange rate on 27 August 1994, which would have amounted to a higher amount in euros than what he received. The Panel observes in passing that the Euro came into effect only on 1 January 1999 as an electronic currency and became legal tender on 1 January 2002, although before 1999 it had been used apparently as a basket of the 11 legacy currencies. The Panel also notes that Appellant’s claim for the sum in euros as of another date arises only in his reply to the JAB Secretariat’s inquiry, after the \$9,181.50 had finally been disbursed. Looking at the overall principle, the Panel finds no support for Appellant’s underlying contention that payment of claims should be based on the fluctuation within global currency markets, any more than it could find merit to presume that delayed payments should be adjusted for inflation. The claim itself was presented in U.S. dollars, and the sum was paid in full in dollars. Losses due to

currency fluctuations may be [an] unfortunate by-product of working with the Organization, but Appellant could no more seek to [sic] than the Organization could seek to pay him less than the dollar amount claimed had the dollar strengthened in the time in which payment was delayed. The Panel therefore makes no recommendation with regard to this item.

Item 2: Reimbursement for lost/missing personal effects

Contentions:

Appellant: Having departed on personal leave on 20 October 2002, Appellant did not return to the duty station as all non-essential personnel were evacuated from the country on 29 October following a conflict in Bangui. Appellant subsequently requested the assistance of a UNDP staff member to sell some of his personal effects and ship the remainder to Paris. Upon its arrival in Paris, certain effects were missing from the delivered shipment. The amount owed was \$6,051.21. Appellant confirms having received €4,598.92, but claims that the actual amount, based on the exchange rate on 15 December 2002 (\$1,0221 = €1) was €920,50. He therefore claims an outstanding balance of €321,58.

...

Respondent:

Neither Appellant nor DESA were able to obtain a copy of the packing list despite numerous efforts in 2003/04. Without the receipts and shipping inventory from Bangui to Paris, DESA could not process the claim. The packing list, with the number of boxes shipped and a description of the contents of each were found in 2006. DESA has stated that it would request the United Nations Claims Board to consider Appellant's claim, limiting its review to those items which Appellant instructed to be shipped but did not arrive with the shipment.

...

Considerations

The Panel considers the basic principle underlying this item to be identical to that of the preceding item, and refers to its considerations therein. The Panel therefore makes no recommendation with regard to this item.

Item 3: Reimbursement of rent and security deposit

Contentions

Appellant: Appellant initially claimed reimbursement for rent for the month of December 2002 and two month's security deposit related to his residence in Bangui. Appellant subsequently withdrew the claim as to the December rent. With regard to the security deposit, as Appellant had already been evacuated, a certain Mme X recuperated the deposit from the landlord on his behalf, but never gave it to Appellant. Appellant dropped his claim for rent reimbursement, and retains his claim for two months security deposit in the amount of €14,69.

...

Respondent: Respondent considers that, in view of the fact that the landlord returned the deposit to a third party, the issue of the deposit was his own responsibility. He never submitted an official claim for reimbursement of rent and security deposit, and, if he had, there would be no basis to consider it.

...

Considerations

The Panel notes that Appellant, having entrusted the recuperation of the security deposit to Mme X, who apparently did not work for the Organization. Mme X never handed over the funds to him, and here the question is whether the Organization is liable for reimbursement. The Panel finds that it is not. Had the Organization taken up the recovery of the deposit itself, it would then have the responsibility to ensure that the money reached Appellant. Here, however, the claim is for reimbursement of funds apparently converted by the acts of Appellant's own agent, who had no affiliation with the Organization, and over whom the Organization had no control. While the Panel recognizes the difficulties involved in recuperating such monies from a duty station following an evacuation, in the Panel's view the Organization does not become guarantor over the bad acts of third parties once an appellant entrusts a third party with the task. The Panel therefore makes no recommendation with regard to this claim.

Item 4: Reimbursement of costs of communication and appeal-preparation

Contentions

Appellant: Appellant claims reimbursement of Euros 1,780.00. Non-appeal oriented expenses include: long distance telephone communications, monthly email subscription, DHL deliveries, translation services for claim-related correspondence (including charge for all translation of dossier for appeal to JAB and eventually the United Nations Administrative Tribunal) and other, office-related supplies such as photocopies and paper. While the Regulations may not, as Respondent states, envision reimbursement of costs of preparation of appeals, neither does it exclude it.

...

Respondent: Appellant failed to provide supporting documentation detailing the specifics of the costs. Due to the lack of supporting documentation, Respondent cannot verify whether any of his claims were already settled previously. Respondent submits that Appellant's claim for reimbursement of costs of filing his appeal should be denied: the Staff Regulations do not provide a basis for reimbursement of such costs.

...

Considerations

The Panel notes that Appellant submitted no documentation sustaining his claim under this item. Nevertheless, the Panel notes that costs are not normally recommended to Appellants in litigation. In its Judgement No. 237, *Powell* (1979), the United Nations Administrative Tribunal (UNAT) stated:

'[a]s regards costs, the Tribunal has declared in its statement of policy contained in document A/CN.5/R.2 dated 18 December 1950 that, in view of the simplicity of its proceedings, the Tribunal will not, as a general rule, grant costs to Applicants whose claims have been sustained by the Tribunal. Nor does the Tribunal order costs against the Applicant in a case where he fails. In exceptional cases, the Tribunal may, however, grant costs if they are demonstrated to have been unavoidable, if they are reasonable in amount, and if they exceed the normal expenses of litigation before the Tribunal.'
See also Judgement No. 1294 (2006).

The Panel finds no extenuating circumstances in this case to diverge from the above jurisprudence in the settlement of claims or in the preparation of Appellant's appeal. Consistent with the Tribunal's jurisprudence, the Panel makes no recommendation on this claim.

Item 5: Reimbursement of loss due to currency exchange rate

Contentions

Appellant: Appellant claimed loss of US\$2,890.89 related to the dollar/euro exchange rate upon disbursement of his final salary payment. Respondent delayed processing his clearance paperwork by nineteen months from December 2002 to July 2004. In that period, the dollar devalued against the Euro by more than 25%. His final pay was in dollars but, pursuant to French law, was converted at the prevailing exchange rate to euros, leading to a loss. Appellant calculates reimbursement for loss in the amount of \$1,973.93 on the basis of the exchange rate on 15 December 2002.

...

Respondent: Respondent was responsible for making the final separation payment into Appellant's US Dollar account with UNFCU, pursuant to his own salary distribution instructions. Accordingly, Appellant's final salary was calculated and paid to him in US dollars in July 2004. The issue of exchange rate loss is not applicable.

...

Considerations

The Panel considers the underlying principle here identical to that in items 1 and 2. Therefore, it makes no recommendation with regard to the claim.

Item 6: Reimbursement for loss due to delayed pension payment

Contentions

Appellant: Appellant claims for loss suffered due to delayed pension payments. Payments theoretically should have commenced at the end of his appointment, i.e., 15 December 2002. However, it had been withheld pending final clearance and final pay, which occurred in July 2004. His pension, a total of €22,040.92, was not deposited until 4 April 2005. As the delays were caused by Respondent, Appellant contends that Respondent is responsible for the loss he incurred from the devaluation of the dollar occurring during the time of the delay. Appellant claims reimbursement for loss in the amount of €3,762.39, based on the exchange rate on 15 December 2005.

...

Respondent: Appellant's claims were either invalid or, at least in part, due to his own omissions to properly submit a documented claim. Insofar as Appellant contests any decision of the United Nations Joint Staff Pension Fund, he should pursue the matter with the UNJSPF pursuant to section K of its rules and regulations.

...

Considerations

The substantive issues arising from Appellant's claim on this item are governed by the UNJSPF. As such, the rules and regulations of the Fund govern. Section K.2 of the UNJSPF Rules vests review of decisions with the Fund itself, thereby precluding appeal to the JAB.

The Panel notes that it appears Appellant has submitted a claim to the UNJSPF. Given the foregoing, the Panel finds it lacks competence over the present item, and therefore makes no recommendation thereon.

Item 7: Claim for moral damages

Contentions

Appellant: Appellant claims 20,000 Euros for moral damages related to psychological stress related to the 1994 and 2002 evacuations and the continued follow-up surrounding four unresolved claims related to those evacuations. Specially, he contends that, following the two stressful episodes undergone by his family and himself in 1994 in Rwanda and in 2002 in Central African Republic, it was necessary for him to battle against UNDP's inertia in addressing his claims, leading to frustration and stress. Appellant claims damages in the amount of €20.000

...

Respondent: Neither the Staff Regulations nor the jurisprudence of the United Nations Administrative Tribunal provides any basis for awarding moral damages under the circumstances of this case. Respondent agrees that the processing of his claims has been hindered by the lack of relevant documentation, some of which could not be obtained due to lack or loss of records, or non-response of relevant parties.

...

Considerations

Although the Panel makes no recommendations with regard to the other items, the Panel notes that the dossier contains ample evidence of inordinate delay on the part of Respondent in handling Appellant's various claims, some of which were settled prior to the Panel's meeting, and of Appellant's efforts to surmount those delays. Ultimately in some cases it apparently took over two years for processing and settlement. For example, it seems that Appellant submitted his MEA claims prior to the year 2000, while the matter was only settled in early 2007. The Panel notes the difficulties in settling staff member claims in terms of loss of records necessitating reanalysis of claims and obtaining information from other agencies.

Moreover, the case file shows that at various times the Administration was actively seized of these claims. However, the Panel finds it highly unlikely even given this that such an excessive delay would have occurred had it been diligently following up with the matters. The Panel considers this inexplicable, and finds that Appellant warrants compensation.

Conclusions and recommendation

10. In light of the foregoing, the Panel unanimously concluded that
 - a. with regard to claims 1, 2, 3 and 5, Respondent ultimately settled the items within the terms of Appellant's employment;
 - b. with regard to claim 4, consistent with UNAT jurisprudence, costs of settling claims or litigation are normally not recoverable by an appellant;
 - c. with regard to claim 6, the JAB has no jurisdiction to consider the items pertaining to Appellant's pension; and,
 - d. with regard to claim 7, that the inordinate delays by Respondent in the process of settling his claims merited compensation to Appellant;

11. It therefore unanimously recommended
 - a. with regard to claims 1-6, the Panel makes no recommendation; and,
 - b. with regard to claim 7, the Panel recommends compensation in the amount of \$6,500.”

On 20 August 2007, the Under-Secretary-General for Management transmitted a copy of the report to the Applicant and informed him as follows:

“The Secretary-General has examined your case in the light of the JAB’s report and all the circumstances of the case and has decided to accept the JAB’s unanimous conclusions and recommendations. Accordingly, he has decided that you be paid compensation in the amount of \$6500 for excessive delays in the processing of your various claims, and rejects all other claims.”

On 28 January 2008, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant’s principal contentions are:

1. Payments should have been calculated at the exchange rate applicable on the date of separation and on settlement of all accounts, and should represent the equivalent in euros on the day of payment of the remaining amounts.
2. The Applicant is entitled to costs and moral damages.
3. The Applicant is entitled to reimbursement of his two months’ security deposit.

Whereas the Respondent’s principal contentions are:

1. The salaries of the United Nations staff members are calculated in US dollars.
2. The Organization cannot be held responsible for the fluctuations in the global currency market.
3. The Respondent cannot be held responsible for the fact that a third party did not reimburse the Applicant for the sum recovered on his behalf.
4. There is no basis for awarding costs or moral damages.
5. The Applicant has been adequately compensated.

The Tribunal, having deliberated from 26 October to 25 November 2009, now pronounces the following Judgement:

I. The Applicant entered into service with the United Nations on 22 February 1989 as an expert under 200-series appointments. He worked for three years on three intermediate contracts: from the date of his entry into service with the United Nations until 27 August 1994 as an expert with the Department of Technical Cooperation for Development in Kigali, Rwanda; from 13 May 1996 to 30 April 1998 as an expert with the Department for Development of Support and Management Services, again in Kigali; and,

from 15 December 2001 to 15 December 2002, as an expert with the Department of Economic and Social Affairs (DESA) in Bangui, Central African Republic.

II. Because of the events that occurred in Rwanda in 1994, at the time of his first intermediate contract, the Applicant was evacuated from Kigali on 11 April 1994 and received a monthly evacuation allowance until the end of his first intermediate contract. Moreover, when rebels attacked the UNDP office in Bangui while he was posted there, most United Nations staff members were evacuated from the Central African Republic in October 2002. As he was unable to return to his duty station before the end of his third contract, he requested that some of his personal effects be sold and that the others be sent back to Paris, where he was living. When he received them, he noted that several of his effects were missing.

III. This series of events prompted the Applicant to submit several requests for reimbursement of miscellaneous costs to the Administration. According to the Applicant, the latter's response was not satisfactory. Therefore, on 24 January 2006, he filed seven claims with the Joint Appeals Board (JAB). In the first claim, he asked the JAB to re-evaluate the monthly evacuation allowance due following his evacuation from Kigali, in order to take into account the difference in the exchange rate of the dollar at the time that allowance should have been calculated by the Administration. He thus claimed €239.31. In the second, he requested, based on a list he had drawn up, reimbursement for personal effects which were missing when his effects were repatriated following his evacuation from Bangui. At the time, he had received €4,598.92 in compensation for his lost effects but he estimated that he was entitled to an additional compensation of €1,321.58 because the real value of the missing goods, which he calculated himself on the basis of the exchange rate in effect on 15 December 2002, was €5,920.20. The third related to a request for reimbursement of the security deposit of €14.69 he had given his landlord in Bangui, which he had been unable to recover because he could not return to Bangui and because the person he had entrusted with that task had refused to repay him that amount. The fourth concerned reimbursement of costs of communication and appeal-preparation, which he estimated at €1,780. The fifth and sixth claims related, on the one hand, to the time it had taken the Administration to process the Applicant's personnel payroll clearance action and, on the other, to late payment of his pension. In the former case, the Applicant estimated that, due to the delay, he had incurred a loss of €1,973.93, due to the drop in the exchange rate for the dollar and, in the latter case, that he had lost €3,762.39 due to the late payment of his pension. Lastly, the seventh claim concerned his efforts to obtain compensation for the moral damages suffered due to the lack of diligence shown by the Administration in processing his successive claims. For that, the Applicant claimed compensation in the amount of €20,000.

IV. The JAB submitted its report on 31 May 2007. As regards the first six claims, it considered that the Applicant's claims were based on mistaken premises or that he had failed to provide sufficient proof of the damage he believed he had sustained. It therefore made no recommendation regarding the first six

claims. As to the seventh claim, regarding the slow pace at which the Administration had handled the various claims, the JAB felt that the “file contain[ed] ample evidence of inordinate delay on the part of Respondent in handling [the Applicant]’s various claims, some of which [had been] settled prior to the Panel’s meeting, and of [the Applicant]’s efforts to surmount those delays”. Because of the “inexplicable” nature of these delays, the Panel recommended that he be paid compensation in the amount of US\$ 6,500. The Secretary-General had accepted all the conclusions in the JAB report.

V. Having refused the compensation proposed by the Secretary-General, the Applicant turned to the Tribunal and submitted seven claims to it; these by and large tie in with those submitted to the JAB.

VI. The Respondent, for his part, in attempting to reject the Applicant’s claims, refers primarily in his answer to the considerations and conclusions of the JAB in its report of 31 May 2007. In rejecting claims Nos. 1, 2, 6 and 7, the Respondent states that the Administration cannot be held responsible for losses resulting from fluctuations in the exchange rate. In rejecting the request for reimbursement of the security deposit which the Applicant was unable to recover, the Respondent points out that the Administration cannot be held as a guarantor in situations where the damage sustained is due to the actions of third parties outside the Organization. With regard to the claim for reimbursement of legal costs, based on the jurisprudence of the Tribunal, Respondent states that there are no special circumstances that would warrant the Tribunal granting such compensation in this case. Lastly, as regards the Applicant’s claim for €20,000 in compensation for moral damages, the Respondent points out that the Applicant has not provided any evidence to support his claim that he is entitled to additional compensation.

VII. In weighing the various arguments, the Tribunal will review the various claims according to the grounds on which they are based. Several claims are based on the grounds that the Administration did not apply the rule that — according to the Applicant — amounts owed should be paid according to the exchange rate applicable on the date of separation and on settlement of all accounts. The claim regarding repayment of the security deposit invokes “the Organization’s *guarantee*”. Another refers to the successive delays by the Administration in processing the Applicant’s claims and to the resulting damage to him. Lastly, the claim for reimbursement of legal fees should be analysed *in fine*.

VIII. Regarding the claims based on the alleged rule that amounts owed should be paid according to the exchange rate in effect on the date of separation and on settlement of all accounts, the Tribunal points out that, before the Tribunal, such claims relate to the monthly evacuation allowance paid to the Applicant following his evacuation from Kigali in 1994, the amount of the compensation paid by the Administration for lost/missing personal effects which were repatriated following the evacuation from Bangui, the amount of the final settlement paid following his separation from service in July 2004 and the amount of the

pension repayment due to the Applicant. All those claims sought to obtain compensation for losses suffered by the Applicant as a result of exchange rate fluctuations.

IX. In that regard, the Tribunal does not agree that there is any rule that states that amounts owed by the Administration must be calculated according to the “exchange rate applicable on the date of separation from service and on settlement of all accounts”, as the Applicant alleges. It notes that, even if there were such a rule, it would not affect the Applicant’s claims concerning monthly evacuation allowance and reimbursement of his lost personal effects, since he seems to limit it to payments owed in the event of separation from service. Furthermore, and above all, the Tribunal notes that the Applicant has not provided any evidence of the existence of such a rule, even though he calls it “universal”. In any event, the rule that he is asking the Tribunal to establish *ex nihilo* would have the Administration guarantee against risks related to currency fluctuations. As the JAB pointed out, while losses due to currency fluctuations may be “an unfortunate by-product of working with the Organization ... [the Applicant] could no more seek adjustment in his favour than the Organization could seek to pay him less than the dollar amount claimed, had the dollar strengthened in the time in which payment was delayed”. Whereas the Applicant calls for the application of an “impartial” rule that would avert a number of claims from United Nations staff members, the Tribunal sees it rather as the formulation of a rule that would have the clear disadvantage of resulting in unforeseeable calculations that would be subject to wide fluctuations. Consequently, as regards to the Applicant’s various claims relating to payment of compensation for losses suffered as a result of fluctuations in the exchange rate, the Tribunal rejects them all.

X. With regard to the statement concerning “the Organization’s guarantee”, which is the subject of the Applicant’s third claim, the Tribunal considers it as groundless as the alleged rule whose existence it has just rejected. The reason the Applicant did not recover the security deposit which he had paid when he arrived in Bangui was entirely the fault of a person who had nothing to do with the Organization. It is, indeed, true that the Applicant, acting on the advice of a member of the Administration, entrusted a third party with the task of settling some of his belongings; however, as the Applicant will recall, that advice was given to him by a staff member who was acting in a personal capacity and who urged caution, as is clear from the wording of the e-mail to which the Applicant refers when seeking to establish the grounds for the “guarantee”, inasmuch as he was told that it would not be wise for him to return to the Central African Republic. He was advised to entrust certain responsibilities to a “third party” but that did not lessen the Applicant’s responsibility for making a wise choice when selecting that third party. Accordingly, the Tribunal fully agrees with the JAB that the Administration cannot be regarded as guarantor or be held liable for the reprehensible conduct of ill-intentioned or ineffective persons having nothing to do with the Organization.

XI. The Tribunal now turns to the claim regarding compensation of €20,000 for moral damages suffered because of the time it has taken the Administration to process the Applicant's various claims. The Tribunal must, in particular, consider whether the compensation of US\$6,500 recommended by the JAB and agreed to by the Secretary-General, but rejected by the Applicant, was sufficient in light of the moral damages suffered. In that regard, the Tribunal notes that on several occasions in his filings the Applicant points out that all the trouble that he has had because of the way the Administration has handled his claims has added to the stress suffered as a result of the Applicant and his wife having to be evacuated twice, once from Kigali and then from Bangui. The Tribunal is well aware of this and of the tragic events which staff members sometimes experience in the performance of their mission. However, the distress which the Applicant has experienced at certain times in his career cannot be taken into account when considering the moral damages suffered by the Applicant due to the lack of diligence the Administration is alleged to have shown in handling his claims.

XII. The Tribunal further notes that, in his written observations dated 29 July 2008, the Applicant explains how he arrived at the sum of €20,000 by evaluating the time and energy spent in preparing the various files submitted to the Administration. However, the Tribunal must point out that the amount paid to compensate for moral damages is based on the Administration's failure to live up to its obligation to act with diligence vis-à-vis its staff and cannot be compared to any "compensation" for the time spent preparing claims within the context of the legal remedies available to staff members in order to protect their interests. The information provided by the Applicant concerning how he arrived at the figure of €20,000 is therefore of little interest. Moreover, the Tribunal notes that the JAB evaluated the moral damages in a manner that is totally satisfactory, recognizing the Administration's failings and recommending compensation that corresponds to what the Tribunal itself has decided with regard to comparable behaviour. Accordingly, the Applicant's claim on this point must be rejected.

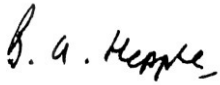
XIII. Lastly, the Tribunal considered the Applicant's claim for €743.23 for reimbursement of costs. The Applicant has stated on several occasions that he regrets having had to turn to the JAB and then to the Tribunal. In that connection, the Tribunal understands that it must have been "unpleasant" to file an application with the Tribunal but supposes that other Applicants must often feel the same way when taking such action. However, being forced to use a remedy that was established for the purpose of protecting the rights and interests of staff members against possible abuse by the Organization cannot in any way be considered grounds for reimbursement of costs, as that would pave the way for granting such reimbursement to all Applicants in legal proceedings. The Tribunal has consistently held that only rarely and in exceptional cases, when the facts of the particular case make proceedings particularly complicated (see 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 with the Tribunal (Judgement No. 655, *Gonzalez de German* (1994), para. XI), will it respond favourably to such

requests. In this particular case, the Tribunal sees no exceptional circumstance that would require it to order payment of such costs. The request is therefore rejected.

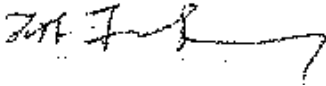
XIV. For the above mentioned reasons, the Tribunal:

1. Confirms the adequacy of the US\$6,500 recommended by the JAB by way of compensation for excessive delays, to which the Applicant is therefore entitled, and orders the Respondent to pay the Applicant the US\$6,500 with interest at the rate of eight per cent per annum as from 90 days from the date of distribution of this Judgement until payment is effected; and
2. Rejects the Application in its entirety.

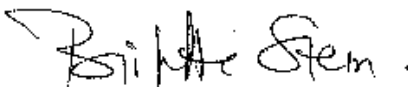
(Signatures)



Sir Bob Hepple
First Vice-President



Goh Joon Seng
Second Vice-President



Brigitte Stern
Member

New York, 25 November 2009



Tamara Shockley
Executive Secretary