Before: **Judge Rowan Downing, Presiding**
Judge Teresa Bravo
Judge Goolam Meeran

Registry: **Geneva**

Registrar: **René M. Vargas M.**

NAKHLAWI

v.

SECRETARY-GENERAL

6. In November 2011, UNICRI signed a project contract with the European Commission ("EC"), to select implementing partners to facilitate the implementation of nineteen actions relating to Chemical, Biological, Radiological and Nuclear Risk Mitigation and Security Governance Programme ("CBRN Programme").

7. On 4 January 2012, the project post of Expert (Grant Management), Job Code Title: Finance Officer, P-3, UNICRI, was advertised in *Inspira*, initially for a duration of one year. The vacancy announcement stated under Special Notice that:

> **This is a project post. Filling of this position is subject to funding availability and the initial appointment will be for a period of one year. Extension of the appointment is subject to extension of the mandate and/or the availability of funds. Staff members are subject to the authority of the Secretary-General and to assignment by him or her. In this context, all staff are expected to move periodically to new functions in their careers in accordance with established rules and procedures.**

8. The Applicant was approached by UNICRI and was told that she was "selected" from the roster and asked whether she would be interested in the post. When the Applicant was informed by the United Nations Office at Vienna ("UNOV") that the post was a project post, she asked how this would affect her status as a permanent appointment holder. She was specifically advised by email of 26 July 2012 that "upon reassignment, your permanent appointment will remain unchanged". The Applicant's further evidence, which was uncontested by the Respondent, was that she was verbally informed that the post was available for a number of years and that she should not wopyKiHhFôt0ôôy0ypKvH-hFhpyhyypKiHhFôt5y5(yypKiHhFô sUode wand wasske post toend

reminded her that the authority of the Head of Department to laterally reassign staff was limited to UNOV/UNODC, hence the Applicant's reassignment to another post before 31 December 2014 depended on her successful application to a vacant post, including any suitable job opening in UNOV/UNODC. Should she not be successful in securing a post within the United Nations before 31 December 2014, she would be separated from UNICRI, resulting in the termination of her permanent appointment due to abolishment, under staff rule

had not yet taken any decision to terminate the Applicant's appointment, any reference by UNICRI or UNOV to the Applicant having been given appropriate notice of her termination should be disregarded.

23. By memorandum dated 22 January 2015, Mr. Rohde informed the Applicant that her request for management evaluation of 22 December 2014 was equally not receivable, as no decision with respect to the termination of her appointment had yet been taken, and also that as a consequence, the decision precedent for her request for reassignment no longer existed, rendering her request moot.

24. By interoffice memorandum also dated 22 January 2015 entitled "[the Applicant]—separation from UNICRI and termination of appointment", Mr. Lucas informed Ms. Carole Wamuyu Wainaina, the Assistant Secretary-General for Human Resources Management, that the Applicant's efforts to actively search for other employment possibilities in the Secretariat were unknown to UNICRI, which precluded him from assisting her vis-à-vis the Hiring Managers and asked her to take appropriate action for consideration of termination of the Applicant's appointment. He noted that alternatively, she may want to pursue the option of agreed termination. He stressed that both UNICRI and UNOV supported the reassignment of the Applicant elsewhere in the United Nations Secretariat, given that no alternative opportunities were available within UNICRI. No response was received to that memorandum.

25. By memorandum dated 30 January 2015, from Mr. Suren Shahinyan,

30. By letter dated 9 March 2015 to the Applicant, Mr. Agadzhanov recalled that Mr. Lucas had informed her on 2 March 2015 that since efforts to find

40. The hearing was held from 20 to 21 September 2016, in the presence of both Counsel. The Applicant attended via telephone from Beirut; Mr. Marelli, Head, CBRN, attended in person, while two witnesses (Mr. Sergey Agadzhanov, Chief, HRMS, UNOV; and Mr. Idrees Mamundzai, then Administrative Officer, UNICRI) attended via videoconference, from Vienna and New York, respectively.

Parties' submissions

41. The Applicant's principal contentions are:

a. The discontinuance of the post she encumbered was due to termination of a mandate and not to post abolition. Therefore, staff regulation 9.3(b) applied to her situation;

b. Alternatively, if her post was abolished and that was the reason for the termination of her permanent appointment, that abolition was procedurally flawed, because:

i. According to art. 3.1 of its Statute, UNICRI is an entity of the United Nations which is part of the UN system;

ii. According to its Statute, UNICRI is governed by a Board of Trustees which, *inter alia*, "(a) Formulates principles, policies and guidelines for the activities of UNICRI; and (b) Considers and approves the work programme and budget proposals of UNICRI on the basis of recommendations submitted to it by the Director of the Institute";

iii. It is clear from the evidence that the decision to discontinue the Applicant's post was taken before the meeting of 9 July 2014 with the Applicant. The budget proposal—which purportedly indicates the abolishment of the Applicant's post—was submitted to the Board of Trustees for consideration only on 13-14 November 2014. Accordingly, it is clear that Mr. Lucas acted unilaterally in deciding to discontinue the Applicant's post;

x. The Applicant tried to challenge the decision to abolish her post several times, but MEU told her on each occasion that it was not reviewable until it was authorized by the Secretary-General or it was final;

xi. Now, after approval by the Secretary-General, the Applicant challenges the unlawful abolishment of the post she encumbered at UNICRI and the basis, or lack thereof, on which that approval to terminate her permanent appointment was made;

xii. The Secretary-General should have made sure that the underlying abolishment was proper before proceeding to terminate her permanent appointment; the termination decision is tainted by the illegality of the decision of the Director, UNICRI;

c. If the decision to abolish the Applicant's post was lawful, the Administration failed to make good faith efforts to re-absorb the Applicant against a suitable post;

i. It is uncontested by the Respondent that under staff rules 13.1 and 9.6(e), the Administration is obliged to make efforts to consider permanent staff members facing post abolition for suitable posts. The Applicant was at all times a staff member of the UN Secretariat. The Respondent's interpretation to limit the Administration's obligation under staff rule 9.6(e) to suitable posts within the department in which the staff member concerned was employed (here: UNICRI) cannot stand;

ii. Under the relevant rules, namely staff regulation 1.2(c), staff rule 9.6(e) and sec. 11 of ST/AI/2010/3, the Administration was obliged to consider the Applicant for suitable posts and the Secretary-General had the authority to reassign her anywhere within the Secretariat. While UNICRI did make efforts to find a suitable post within UNICRI, albeit unsuccessfully, the Administration failed to

make good faith efforts to find a suitable post for the Applicant anywhere within the Secretariat; and

d. During the hearing, the Applicant made it clear that she requests rescission of the decision and her reinstatement, and/or compensation over two years' net base salary for the unlawful termination of her permanent appointment, for material loss and moral damages, for which she gave evidence.

42. The Respondent's principal contentions are:

a. The decision to terminate the Applicant's permanent appointment was based on the abolition of the post she encumbered, not on the termination of a mandate under staff regulation 9.3(b). The reference to termination of a mandate under that provision refers to the mandate of a unit/department, in

j.

47. With respect to termination, staff rule 9.6 provides:

> **Rule 9.6**
>
> **Termination**
>
> **Definitions**
>
> **(a) A termination within the meaning of the Staff Regulations and Staff Rules is a separation from service initiated by the Secretary-General.**
>
> **…**
>
> **(c) T Secretary-General may, giving the reasons therefor , terminate the appointment of a staff member who holds a temporary, fixed-term or continuing appointment in accordance w0ô5pKspKgHhiHhFôt0ô5pKtH-thF22t2Kh H-ôyyF0y5KtHhFôt0ô5pKheHthF020ôK H-ôyyF0y5Kt appointment w0ô5pKspKgHhiHhFôt0ô5pKtHhFôt0ô5pKhoutHhFôt5y50K H-ôôcF05cKtH-thF22ht below0ô5pKspKgHh H-5yFôt5(KaHhFh5520ypKnd H-5yFôt5(KsHhFty50cpKtHthF50pKaHthF020ô availability of suitable posts in which their services can be effectively utilized, provided that due regard shall be given in all cases to relative competence, integrity and length of service, staff members shall be retained in the following order of preference:**
>
> **(i) Staff members holding continuing appointments;**
>
> **…**
>
> **(g) Staff members specifically recruited for service with the U0ô5pKspKgHhniHhFôt0ô5pKtH-thF22t2KeHhFh5520ypKd Ht2tyFpc(KN0ô5pKspKgHhFôchô(0K**

in matters of appointment under a resolution of the General Assembly or as a result of an agreement entered by the Secretary-General have no entitlement under this rule for consideration for posts outside the organ for which they were recruited.

48. Administrative Instruction ST/AI/2010/3 (Staff Selection System) provides in sec. 11 *Placement authority outside the normal process***:**

> **11.1 The Assistant Secretary-General for Human Resources Management shall have the authority to place in a suitable position the following staff members when in need of placement outside the normal process:**
>
> **…**
>
> **(b) Staff, other than staff members holding a temporary appointment, affected by abolition of posts or funding cutbacks, in accordance with Staff Rule 9.6(c)(i);**

49. The Statute of UNICRI relevantly provides:

> **Article III**
>
> **STATUS, ORGANIZATION AND LOCATION OF THE INSTITUTE**
>
> **1. The Institute shall be a United Nations entity and thus form part of the United Nations system.**
>
> **2. The Institute shall have its own Board of Trustees and a Director and supporting staff. It shall be subject to the Financial Regulations and Staff Regulations of the United Nations, except as may be provided otherwise by the General Assembly. It shall also be subject to the Financial Rules, the Staff Rules and all other administrative issuances of the Secretary-General, except as may be otherwise decided by the Secretary-General.**
>
> **Article IV**
>
> **BOARD OF TRUSTEES**
>
> **1. The Institute and its work shall be governed by a Board of Trustees (hereinafter referred to as "the Board") under the overall guidance of the Committee on Crime Prevention and Control.**
>
> **2. The Board shall be composed of the following:**
>
> **…**

52. In light of the foregoing, in deciding whether the termination of the Applicant's appointment was lawful, the Tribunal has identified the following issues, which it will examine in turn:

a. Was the reason for the termination of the Applicant's appointment the abolition of the post she encumbered at UNICRI or the termination of the mandate of that post within the EC/UNICRI project?

b. As a result, is the legality of the termination of the A

54. While the term "abolition of post" is not defined by the Staff Regulations

61. To support the argument that the present case concerns a post abolition, the Respondent submits that "the decision by a donor to discontinue funds for a

purpose fund, but not of one that was part of the special purpose fund. Further, in the Respondent's view, the ratification by the Board in November 2014 constituted its approval of the budget. Accordingly, even if such approval was required, it was in fact obtained.

68. The Tribunal has looked closely at the relevant provisions of the UNICRI Statute and did not find any support for the Respondent's argument that a distinction has to be made between posts from the general project fund and those from the special project fund. It noted that the *[UNICRI] Programme of Work and Budget Estimates for the year 2015* **referred to General purpose (GP) funds and Special purpose (SP) funds, as follows:**

> **General-purpose (GP) funds are un-earmarked voluntary contributions, which partially finance the executive direction and management of UNICRI. GP Funds may also be used to finance advances for special purpose funded projects in exceptional circumstances after a careful review and approval by the UNICRI Director.**
>
> **Special-purpose (SP) funds are earmarked voluntary contributions,**

71. Under art. V.2.(a), the Statute provides that:

> **The Director shall have overall responsibility for the organization, direction and administration of the Institute in accordance with general directives issued by the Board and within the terms of the authority delegated to the Director by the Secretary-General. The Director shall,** *inter alia***:**
>
> **(a) submit the work programmes and the budget estimates of the Institute to the Board for its consideration and adoption;**
>
> **…**
>
> **(e) Appoint and direct the staff of the Institute on behalf of the Secretary-General;**

72. The Respondent conceded that from the Director's authority to appoint and direct the staff of the Institute under art. V.2(e), an authority cannot be deduced to abolish a post, nor can the authority to terminate the Applicant's permanent appointment.

73. As such, while for operational reasons, a distinction was established between GP and SP funded posts, that distinction is not reflected in the UNICRI Statute. Under that Statute, the Director, UNICRI, can make recommendations on UNICRI's budget—which includes the abolition of posts—to the Board of Trustees for the adoption/approval by the latter, without a distinction to GP or SP funded positions.

74. Moreover, the Tribunal noted that although the issuance of a Secretary-General's bulletin ("SGB") on UNICRI has been the subject of discussion already in 2011, it was confirmed that no such SGB had been issued to date. The UNICRI Statute thus remains the only legal document governing, *inter alia*, **the interaction between the Director, UNICRI, and its Board of Trustees.**

75. Further, despite the Tribunal's request, the Respondent was not able to produce any document in support of his argument that the Board of Trustees had delegated the authority to administer project-funded activities, in particular, in relation to the authority to abolish a position, to the Director, UNICRI. The only document referred to by the Respondent was the *Report of the Board of Trustees***,**

which stresses the operational flexibility of UNICRI to enter into funding agreements for projects, and to initiate implementation of the project upon receipt of funds.

76. The Tribunal recalled the jurisprudence of the Appeals Tribunal, which ruled in *Baig et al.* **2013-UNAT-357 that "in matters of delegation of authority,**

information that was misleading in that Table 10 of the budget report (Human Resources Table 10: *Staffing table for Security governance and counter terrorism unit***) refers to eight P-3 posts approved in 2014, as opposed to eleven proposed for 2015, and indicates that the change in P—3 posts was "three". If, however, a decision was to be made by the Board (in adopting the report) to abolish the P-3 post encumbered by the Applicant, the table should have referred to a change of "four" rather than "three" P-3 posts. Further, in the first paragraph of the narrative under Table 10, reference is made to the creation of a new P-4 post (for the De-radicalization programme in Yemen). In contrast, the Tribunal notes that no mention is made there, nor anywhere else in the report, of the abolition of a P-3 post or any other post, let alone of the specific P-3 post encumbered by the Applicant (Expert (Grant Management)). The Respondent's witnesses were unable to explain the contradictions contained in the document. One witness gave evidence that the information in the budget with respect to project posts was rather a "wish list".**

79. After the hearing, the Respondent produced a document prepared as part of an original draft of papers to go to the Board, which made explicit reference to the fact that the P-3 post encumbered by the Applicant was no longer needed in Turin. That document was never submitted to the Board. The final document presented to the Board did not mention the abolition of the Applicant's post. It would appear that a conscious decision was taken not to mention to the Board the fact that a decision had already been taken to abolish the Applicant's post. The original reference to this abolition was clearly edited out. As such, and in light of the misleading information provided to the Board, the Tribunal concludes that the ratification of the budget by the Board can in no way 5520ypKtHhFôt0ô5pK H-5yFôt5(KdoHthFp0ypKeHhF

If the reason for the termination of the Applicant's appointment was post abolition, did the Administration comply with its obligations under staff rule 13.1(d) when it terminated the Applicant's permanent appointment?

81. The Respondent did not contest that in case of termination of permanent appointment under staff rule 13.1(d), the Administration has to make good faith efforts to place the concerned staff member in a suitable post. However, the Administration argues that the extent of that obligation is limited to the department in which the Applicant was employed at the time of separation. The Respondent notes that the Applicant had been transferred, between departments, from DFS to UNICRI, in 2012, and that any obligation to make efforts to place her were limited to the "parent department", which he notes was UNICRI. It is the Respondent's view that since UNICRI made genuine efforts, and since the Applicant's candidature to a few positions in the Secretariat were given due consideration, the Administration complied with its duty under the relevant rule.

82. The Applicant submits that the duty of the Organization to make efforts to retain her services by way of placement to a suitable post extended to the whole United Nations Secretariat. It is the Applicant's case that by limiting these efforts to UNICRI, the Administration did not fulfil its obligations under staff rule 13.1(d). She argues that the mere fact that Hiring Managers were alerted in respect of her application for four posts within the Secretariat and that she should be given "due consideration" since her post had been abolished does not meet the Organization's obligation under staff rule 13.1(d). Merely to claim, without having provided any particulars, to have given "due consideration" is not compliant with the policy objectives of giving priority consideration to permanent staff members whose posts have been abolished. Such due consideration must be clearly demonstrable.

83. In determining whether the Administration complied with its duty under staff rule 13.1(d), the Tribunal finds it necessary to take into account the *rationale* **behind the creation of a career service at the United Nations. It notes that from its inception, the United Nations gave particular importance to the consideration of granting staff members the status of permanency. The** *rationale* **for the**

Secretary-General on the Report of the Joint Inspection Unit on young professionals in selected organizations of the United Nations system: recruitment, management and retention, A/55/798/Add.1, 9 March 2001).

87. The General Assembly in 2009, referring *inter alia* to the above-referenced resolution 51/226, approved new contractual arrangements comprising three types of appointments (temporary, fixed-term and continuing), under one set of Staff Rules, effective 1 July 2009 (A/RES/63/250).

88. With the introduction, in 2009, of continuing appointments, and by constantly increasing the number of fixed-term and temporary appointments over time, the United Nations seems to be giving more weight to considerations of its operational flexibility.

89. The foregoing notwithstanding, the Tribunal notes that the workforce of the United Nations, as it currently stands, still contains staff members enjoying the status of permanent staff members, and that they are given particular protection by the Staff Rules and Regulations. As such, pursuant to staff rule 13.1(c), and unlike continuing appointments, their appointment cannot be terminated without their consent on the grounds of "interests of the good administration of the Organization" (cf. above). Further, under the conditions of staff rule 13.1(d), staff members with permanent appointments shall be retained in preference to those on all other types of appointments, including continuing appointments. It is the Tribunal's view that staff rules 13.1(c) and 13.1(d), read together with staff rule 9.6(e) have to be read and interpreted in light of the *rationale* behind permanent appointments/career service, as it has been discussed since the inception of the United Nations.

90. With this in mind, the Tribunal recalls what it held in *El-Kholy*[2] with respect to the obligations of the Administration pursuant to staff rule 9.6(e) and 13.1(d) when considering the termination of the appointment of a permanent staff member:

[2] Followed in *Hassanin* UNDT/2016/181.

lower grade and to widen its search accordingly (see Judgments 1782, under 11, or 2830, under 9).

64. In Judgment No. 1782 (1998), the ILOAT applied staff rule 110.02(a)2 of the United Nations Industrial Development Organization, which is similar to staff rule 9.6(e) and, in para. 11, ruled as follows: What [staff rule 110.02(a)] entitles staff members with permanent appointments to is preference to "suitable posts in which their services can be effectively utilized", and that means posts not just at the same grade but even at a lower one. In a case in which a similar provision was material (Judgment 346: in re Savioli) the Tribunal held that if a staff member was willing to accept a post at a lower grade the organisation must look for posts at that grade as well.

65. In relation to the Respondent's contention that vacancy lists were published and the Applicant did not apply, the ILOAT, in Judgment No. 3238 (2013), in considering whether the mere advertising of posts inviting individuals to apply was sufficient to comply with the duty to give priority to reassigned staff members, said:

> **At all events, in law the publication of an invitation for applications does not equate with a formal proposal to assign the complainants to a new position, issued specifically in order to comply with the duty to give priority to reassigning staff members holding a contract for an indefinite period of time.**

66. The Respondent submits that he has discharged any obligation under staff rule 9.6(e) by giving the Applicant the opportunity of participating in the Job Fair and offering her three temporary assignments in March 2014. The Respondent further submits that he could not otherwise consider the Applicant for any vacancies for which she had not applied, or for lateral moves/placement. In light of the above principles and for the reasons outlined below, the Tribunal considers that the application by the Respondent of the Administration's duty of good faith under staff rules 9.6(e) and 13.1(d) was far too restrictive. upKeHhFh5520ypKntH-thF22

92. Indeed, according to art. III.1 of the Statute of UNICRI, "[t]he Institute shall be a United Nations entity and thus form part of the United Nations System"; it was established in 1986 by the Economic and Social Council (resolution 1986/56 of 24 May 1989). According to art. V of its Statute, it is subject to the United Nations Financial Staff Regulations and Rules, and all other administrative issuances of the Secretary-General except as otherwise decided by the Secretary-General. The terms and conditions of service of the Director and the staff are governed by the United Nations Staff Regulations and Rules.

93. In this respect, the Tribunal notes that upon the transfer of the Applicant between departments, from DFS to UNICRI, she did not sign a new letter of appointment with UNICRI. Rather, during her tenure with UNICRI, she

97. The Respondent admits, and the evidence shows, that the Administration made efforts to place the Applicant only against available suitable posts at UNICRI, and there were none. The Tribunal is fully satisfied that Mr. Lucas made good faith efforts to consider the Applicant, who did not possess the required expertise for the limited positions that were available at UNICRI at the time of her termination. While Mr. Agadzhanov also sent a follow-up email to OHRM to give consideration to the Applicant's candidature for four posts within the Secretariat, OHRM's efforts to assist the Applicant, as a displaced permanent staff member, were limited simply to informing the Hiring Managers about the Applicant's situation and asking them to give her "due consideration". In fact there was scant evidence of any consideration being given to placing the Applicant, who was on two Secretariat rosters at the P-3 level, against any roster post, or to otherwise place her against available positions within the Secretariat, by way of lateral transfer or assignment. Such an approach is clearly not in conformity with the Administration's duty under staff rule 13.1(d).

98. The Tribunal further notes that the USG/DM, who took the decision to terminate the Applicant's permanent appointment on behalf of the Secretary-General, was given incorrect and misleading information, when he was told that considerable efforts were made to assist the staff member in securing another appointment, within UNICRI or within the United Nations system, but

> **14. There is no "undisclosed policy" to always elect to pay compensation instead of rescinding a decision regarding appointment, promotion or termination pursuant to Article 10 (5) of the Tribunal's Statute. Decisions to reinstate, to cancel a promotion, or to instead pay compensation are taken based on administrative and operational reasons. The fact that the Administration may often elect to pay compensation in other cases does not in and of itself constitute grounds for warranting the payment of a higher compensation in this case pursuant to Article 10 (5) (b).**

103. During the hearing, and upon the Tribunal's further inquiry, the Respondent informed that while at UNOG there was no case at which the Administration opted for rescission (noting that they in general concerned non-selection/promotion cases, rather than termination decisions), there was no

reasons for the rescission. There may, thus, be cases in which the career of staff members, who dedicated their entire professional life to the Organization and its mission, is completely ruined by an act carried out by the Respondent and found to be unlawful. It is apparent to the Tribunal, as demonstrated by the Applicant in this matter, that in light of their specialization in their career at the United Nations, staff members, who are found to have been wrongly terminated as a matter of law, are virtually unemployable outside the Organization. Notwithstanding this, no individual consideration is given to the possibility of reintegration, for "administrative and operational reasons".

106. The Tribunal is of the view that this matter goes to the core of the creation of the "new" internal justice system and the very nature of the accountability of management and the duty of management, and the Organization, towards each and every member of staff, if he or she has done no wrong. It finds that the policy behind the Tribunal's Statute and the whole system of justice is put at risk by the attitude of management to systematically opt for the payment in lieu of rescission under art. 10.5(a). It also expresses its concern that the Statute is silent on how the discretion under art. 10.5 should be exercised and what reasonable consideration under these terms should entail. The foregoing notwithstanding, the Tribunal finds the fact that the Administration was unable to present a single case where individual consideration was given to rescission and subsequent re-integration under art. 10.5(a) of the Statute, shows that it fails to exercise the discretion accorded to it under that article. Failure to exercise discretion is in itself illegal and improper. It is for the General Assembly to consider whether the underlying policy objective is being frustrated by what appears to be an unwritten policy operated by senior managers (see *Valimaki-Erk* **2012-UNAT-276).**

107. The Tribunal requests that in this case, actual individual consideration be given to the possibility of rescinding the decision to terminate the Applicant's appointment and to reinstate her in a post commensurate with her qualifications, experience and the grade she had at the time of her separation. This is of particular importance in this case, since the decision- maker himself had taken the contested decision on the basis of incorrect information.

108. The foregoing notwithstanding, the Tribunal is mandated, under the Statute, to set an amount of compensation "in lieu of" rescission. It finds that the exceptional circumstances of this case justify the award of compensation exceeding the equivalent of two years' net base salary, set down in art. 10.5(b) of its Statute. The Appeals Tribunal recalled in *Hersh* 2014-UNAT-433 what it had held in *Mmata* (2010-UNAT-092), namely that "art. 10.5(b) of the UNDT Statute does not require a formulaic articulation of aggravating factors; rather it requires evidence of aggravating factors which warrant higher compensation".

109. The Tribunal notes that the Applicant's case is particularly serious, since she had a considerable career with the Organization, in terms of its length, but also since she successfully passed the G-to-P examination and was on two Secretariat rosters.

110. The G-to-P examination is an instrument that allows career advancement for persons who have worked in the system, through a mechanism that ensures objectivity and the selection of the best qualified persons (cf. General Assembly resolutions A/Res/35/210 and A/Res/33/143 (Personnel questions)). The Applicant, who started her career with the Organization in 2001, successfully passed the G-to-P examination in Finance in 2008 and scored first out of two thousand candidates. Moreover, at the time of her separation, the Applicant was on two Secretariat rosters, for "Finance and Budget Officers" and "Program Management Officers". The foregoing shows that the Applicant has a broad profile and is highly competent and qualified to work in posts as Finance and Budget or Program Management Officer at the P-3 level. Further, according to the roster policy, and the jurisprudence of the Appeals Tribunal on the automatic appointment of a rostered candidate without a selection process (*Charles* 2014-UNAT-416; *Skourikhine* 2014-UNAT-468), the Applicant could have been approached and directly selected from the roster.

111. Further, the Tribunal notes that staff members are encouraged to be mobile, and the General Assembly has in the past requested the Secretary-General "to submit proposals aimed at encouraging voluntary mobility of staff" (cf. A/RES/63/250, under Chapter VII *Mobility*). The Applicant accepted her selection for a P-3 project position, from the P-3 roster, upon the explicit written advice and assurance, which she received in direct response to her specific inquiry, that her status as a permanent staff member would not be affected by that move. She had every right to rely upon such advice.

112. The Tribunal is concerned that staff members will be discouraged from opting for voluntary mobility if acceptance of a project funded post, which is known to be of a temporary nature, may result in the termination of at least a permanent appointment, on the mere grounds that the functions of that post were no longer needed. This could seriously undermine the policy of (voluntary) mobility. In the Tribunal's view, the fact that the Applicant had been given an advice and assurance that her taking on a post with functions that were limited in time would not affect her status as a permanent staff member and that nevertheless, her appointment was terminated exactly on these grounds, adds to the seriousness of the Applicant's case and constitutes another exceptional circumstance.

113. In light of all of the foregoing, and the seriousness of the breaches of the Applicant's rights as presented above, the Tribunal finds it appropriate to set the amount of compensation under art. 10.5(a) at three years' net base salary. In addition, the Applicant shall receive compensation in the amount equal to the contributions (the staff member's and the Organization's) that would have been paid to the United Nations Joint Staff Pension Fund for a three year period.

114. The Tribunal notes that the Applicant also requested moral damages. Under art. 10.5 of its Statute, as amended, the rules of evidence with respect to an award of moral damages have been modified, and they can only be granted if evidence to sustain such an award is presented (*Featherstone* 2016-UNAT-683). The evidence as required under art. 10.5, as amended, may be in the form of medical reports or other evidence, but is not so restricted and oral evidence can be sufficient. The

f. All other claims raised in this application are dismissed.

(Signed)	*(Signed)*	*(Signed)*
Judge Rowan Downing	**Judge Teresa Bravo**	**Judge Goolam Meeran**

Dated this 11th day of November 2016

Entered in the Register on this 11th day of November 2016

(*Signed***)**

René M. Vargas M., Registrar, Geneva