



8. In the present case, the Appellant sought moral damages from the UNDT on the basis of the delays he encountered in his claims for SPAs. The UNDT declined to award such damages stating that, “in the absence of particular circumstances, which have not been alleged in this case and which are not apparent from the record, the Tribunal considers that the fact that the Administration delayed in dealing with a claim from a staff member for an SPA, however regrettable that might be, is not such as to cause moral damage giving rise to compensation”.

9. The Dispute Tribunal Judge is best placed to assess from the evidence, records or otherwise whether “particular circumstances” exist such as to give rise to a claim for moral damages. It is obvious from his determination on this issue that the Dispute Tribunal Judge was of the view that the circumstances of the present case did not meet the criteria necessary for an award of moral damages. In his submissions to this Tribunal, the Appellant, other than to recite cases where compensation for delays was awarded, has not made reference to what arguments he made before the UNDT to support his claim for moral damages.

10. For the record, we note that the Joint Appeals Board (JAB) recommended payment to the Appellant of compensation, for the delays he encountered in processing his SPA applications, equivalent to the SPA at the P-4 level he should have received for the period 21 October 2002 until 4 March 2003 (a time frame not the subject matter of appeal to either the UNDT or to this Tribunal). This payment was duly made by the Administration by way of an SPA to the P-4 level for the period 21 October 2002 to 4 March 2003.

11. We note that in the submissions the Appellant made to the former Administrative Tribunal, he contended that he should have received that SPA as a matter of course for work he had carried out. Be that as it may, at the end of the day, in awarding that period to the Appellant in 2008, the JAB took cognizance of delays that had occurred.

12.

19. On the other hand, the JAB found the delays at each stage of the SPA approval procedure inexcusable, and recommended that Mr. Cieniewicz be awarded compensation in the amount equivalent to an SPA to the P-4 level for the period from 21 October 2002 to 4 March 2003 that he should have received. The Secretary-General accepted the JAB's recommendations on 10 March 2008.

20. Mr. Cieniewicz appealed to the former Administrative Tribunal. His case was subsequently transferred to the UNDT after the abolition of the former Administrative Tribunal on 31 December 2009.

21. In Judgment No. UNDT/2011/048, the UNDT rejected Mr. Cieniewicz's application in respect of the decision not to grant him an SPA for the period from 21 February 2000 to 13 August 2001. In the view of the UNDT, the pr

30. Regarding the issue of interest, the Secretary-General submits that, irrespective of whether or not Mr. Cieniewicz had requested payment of interest, given that the UNDT held that he was not entitled to the payment of an SPA for the February 2000 to August 2001 period, it would be nonsensical to order the payment of interest on a sum that was never due.

Considerations

31. The principal issue for consideration in this appeal is whether the UNDT correctly determined that the Appellant (the holder of a

for payment of an SPA. The UNDT therefore did not err in the manner in which it approached the issue.

43. With regard to the Appellant's contention that the Dispute Tribunal Judge erred in ruling that as a result of the reassignment of the postholder "with his post", the post in question was "abolished" temporarily or otherwise, we do not find it necessary to make a specific determination on the words used by the UNDT to articulate its analysis of the plain requirement of Section 1.2, having regard to our finding that the UNDT properly determined that there was no "vacant" or "temporarily vacant" post for the purposes of ST/AI/1999/17.

44. On the other argument made by the Appellant on the issue in question, the Appeals

47. The Appellant has suggested that, on the part of the Administration, there was a predetermination that he would not receive an SPA for the period in question (February 2000 to August 2001). This suggestion is however contradicted by a communication between HRMS and the Deputy Director, OCHA, dated 27 September 2002 when the latter suggested that the Appellant be granted a "long due SPA" for various periods (including February 2000 to August 2001) during which he had been carrying out P-5 functions.

48. It is not disputed but that for periods other than February 2000 to August 2001, the Appellant received SPAs, albeit that there was considerable delay on the part of the Administration in making said payments.

49. With regard to the period 21 February 2000 to 13 August 2001, the case made (from 2002 onwards) for the payment of an SPA to the Appellant did not succeed because a necessary statutory requirement could not be met by the Appellant, namely that he was the holder of a "vacant" or "temporary vacant post". Albeit that the Appellant himself (and indeed the JAB) regarded this hurdle as a technicality, it remained the case that the Appellant was unable to overcome this hurdle.

50. In all the above circumstances, we affirm the decision of the UNDT that the Appellant did not fulfill a necessary requirement pursuant to ST/AI/1999/17 for the payment of an SPA for the period in question, and the appeal on this issue is thus dismissed.

51. The Appellant submits that the UNDT misdirected itself in law by ruling that moral damages are not awardable for excessive delays in dealing with claims from staff members. This Tribunal concurs with the general principle established by case law (including that of the former Administrative Tribunal) that when unconscionable delays occur on the part of the Administration in dealing with claims of staff members, such may give rise in certain circumstances to a compensatory award.

52. In the present case, the Appellant sought moral damages from the UNDT on the basis of the delays he encountered in his claims for an SPA. The UNDT declined to award such damages stating that, "in the absence of particular circumstances, which have not been alleged in this case and which are not apparent from the record, the Tribunal considers that the fact that the Administration delayed in dealing with a claim from a staff member for an SPA, however regrettable that might be, is not such as to cause moral damage giving rise to compensation".

