UNITED NATIONS DISPUTE TRIBUNAL	Case No.:	UNDT/NY/2009/058/ JAB/2009/002
	Order No.:	69 (NY/2010)
	Date:	15 April 2010
	Original:	English

Before: Judge Goolam Meeran

Registry: New York

Registrar: Hafida Lahiouel

GOMEZ

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON COMPENSATION

Counsel for applicant:
Duke Danquah, OSLA

Counsel for respondent:
Steven Dietrich, ALS/OHRM, UN Secretariat

Introduction

1. The Tribunal found for the applicant and ordered the respondent to pay to the applicant the equivalent of two months' net base salary for distress and emotional injury and directed both parties "to attempt to agree a remedy which places the applicant in the position she would have been had she not been required to take a break in service in May 2008" (paras. 25 and 26 of Judgment UNDT/2010/042).

2. On 15 April 2010, the parties filed a joint submission on the agreed remedy, stating that in the event the Tribunal's judgment on liability is not appealed within the prescribed statutory period, the parties agree that the judgment will be implemented as set out below:

> 2. In order to place the Applicant "in the position that she would have been had she not been required to take a break in service in May 2008", the Administration would need to modify her personal record, i.e. to rescind her separation personal action, effective 4 May 2008, and extend her appointment to cover the period of break-in-service from 5 May to 7 May 2008. By taking this action, the Applicant would be paid salary for 3 days from 5–7 May 2008. Since the Applicant's service would be considered continuous from her reappointment with OCHA on 1 June 2006 until today, the calculation of her repatriation grant, annual leave entitlement and sick leave entitlement would be also adjusted accordingly.
>
> 3. With respect to her pension entitlement, a break-in-service for a period less than 30 days does not affect the continuity of pension contributions. Therefore, the Applicant's pension contributions were considered continuous even with the 3-day break-in-service; thus no remedial action would be required.
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> 4. In addition to the above-mentioned correction of record and its derivative entitlements, the Applicant would have been eligible for home leave in or after June 2008, had she not been required to take break in service in May 2008, provided that her service would have been expected to continue at least 6 months beyond the date of her return. The Travel Unit, Travel and Transportation Section, provided the parties with the lump-sum payment of home leave travel between New York and Rafaela (applicant's home leave place), Argentina, for 2008 as US$4,449.00 per adult. Therefore, the Applicant would have been entitled to receive US$8,998.00 for her and her spouse as lump-

sum travel payments, if she would have availed of her home leave at that tune.

3. The remedy proposed jointly by the parties appears fair and reasonable and I will therefore order compensation and specific performance as proposed in the parties' joint submission.

IT IS ORDERED THAT:

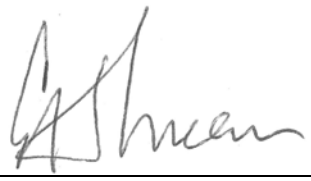
1. The respondent is to pay to the applicant the equivalent of two months' net base salary for distress and emotional injury (cf. para. 25 of UNDT/2010/042).

2. The respondent is to modify the applicant's personnel records by extending her appointment to cover the period of break in service from 5 to 7 May 2008. The respondent is to pay the applicant her net salary for three days (5–7 May 2008).

3. The respondent is to adjust the applicant's repatriation grant, annual leave and sick leave entitlements and compensate the applicant for any monies owed to her as a result of this adjustment.

4. The respondent is to pay USD8,998 as compensation for home leave travel entitlements.

5. The payments identified above are to be made within 45 days from the date of receipt of this order, failing which interest on them shall accrue at the rate of eight per cent per annum until payments are effected.



Judge Goolam Meeran

Dated this 15th day of April 2010