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## **Introduction**

1. The Applicant, a former staff member in the Publishing Section, Meeting and Publishing Division of the Department for General Assembly and Conference Management (“DGACM”), filed an application contesting the decision to abolish his post and, as a result, to terminate his permanent appointment.

2. The Applicant was one of fourteen former and current staff members who, in March 2014, filed applications relating to the decision to terminate their permanent appointments following the abolition of a number of posts in DGACM. Several of the applicants subsequently withdrew their applications. This case was set down for a hearing along with five other cases on 29 and 30 March 2016.

3. The Tribunal would have preferred to render this decision earlier, however, due to the number of applicants in related matters, who were all differently situated in many material respects, a detailed analysis of the claims, submissions, issues, and evidence was required. The parties were unable to agree on a test case for the Tribunal to consider, and each matter had to be dealt with separately, albeit the parties agreed to hold a joint hearing on the merits in the related cases. In the same time period, the Tribunal also considered a separate case that stemmed from the same abolition/termination process and dealt with similar issues, which required careful consideration (*Hassanin* UNDT/2016/181). The finalization of this judgment was further affected by, amongst other matters, twelve applications for suspension of action filed in New York between late April 2016 and October 2016, seven of which were disposed of by the undersigned Judge.

4. Due to the extensive detail of facts and issues, this Judgment contains a table of contents as an *aide mémoire*.

**Brief procedural history**

5. Due to the large number of applicants who filed similar applications in

8. The three witnesses listed above were called on behalf of the Respondent, and provided the relevant testimony in so far as it related to each of the Applicants concerned.

9. On 15 April 2016, the parties filed their consolidated closing submissions in relation to this case and related six cases.

the Department was “actively engaged” with OHRM and other offices to “address the matter proactively”:

*Abolishments*

I.106 A total of 99 posts are proposed for abolishment, including 4 General Service (Principal level), 56 General Service (Other level) and 39 Trades and Crafts posts, at Headquarters under subprogrammes 3 and 4, as follows:

...

(c) The abolishment of 39 Trades and Crafts posts and 22 General Service (Other level) posts in the Reproduction Unit and the Distribution Unit, reflecting the completion of the shift to an entirely digital printing operation ... ;

...

I.107 The Advisory Committee enquired as to the potential impact of post abolishment on staff and was informed that the staff in the Publishing Section who might lose employment would be affected if the proposed budget were approved. In anticipation of this possibility, the Department had been actively engaged, together with the Office of Human Resources Management and other relevant offices, to address the matter proactively. ...

I.108 The Advisory Committee recommends the approval of the proposed abolishment of 99 posts in the Department.

*General Assembly resolution 68/246*

14. On 27 December 2013, the General Assembly approved the Secretary-General’s proposed programme budget for the biennium 2014–2016, section 2 of which provided for the abolition of 59 posts in the Publishing Section of the Meetings and Publishing Division of DGACM.

*Note of 30 December 2013*

15.

authority, most recently under judgement



a result, the Secretary-General has decided to terminate your permanent appointment. The present letter, therefore, constitutes the formal notice of termination of your permanent appointment under staff rule 9.7.

You are strongly encouraged to apply for all available positions for which you believe you have the required competencies and skills. Should you submit an application, you are invited to so inform the DGACM Executive Office, which will support you in liaising with the Office of Human Resources Management with a view to giving priority consideration to your application.

In the event that you are not selected for a position, I regret to inform you that you will be separated from service not less than three months (90 days) of receipt of this notice, as per staff rule 9.7. However, you will be entitled to a termination indemnity in accordance with staff regulation 9.3(c).

My office will assist you in every possible way during this difficult time, and I sincerely wish you success with your applications.

*Request for management evaluation*

18. On 31 January 2014, the Applicant filed a request for management evaluation of the decision to abolish his post and to term

First, that in light of the fact that the termination notices were given out over a period of seven

*Continued employment*

23. The Applicant's permanent appointment was not terminated as he secured further employment at the G-6 level, step 11.

**Applicant's submissions**

24. The Applicant's principal contentions may be summarized as follows:
- a. The decision to abolish the Applicant's post and to terminate his permanent appointment was contrary to General Assembly resolution 54/249, adopted on 23 December 1999, which emphasized that "the introduction of new technology should lead neither to the involuntary separation of staff nor necessarily to a reduction of staff". The ACABQ approved the budget for 2014–2015 and proposed abolishment of posts in the Publishing Section based upon the assurances that DGACM was acting proactively to address the matter consistent with resolution 54/249. The Administration has failed to show that the General Assembly has rescinded its mandate as reflected in General Assembly resolution 54/249;
  - b. The Executive Officer, DGACM, lacked the authority to terminate the Applicant's permanent appointment. Pursuant to staff rule 13.1(a), the Applicant retained his permanent appointment until his separation from the Organization, and therefore the Secretary-General could not terminate that appointment (i.e., initiate the separation from service) under staff regulation 9.3(a)(i) as read with staff rules 9.6(a) and 9.6(b);
  - c. The procedures adopted in the implementation of the reduction of staff, including for the Applicant, breached the obligations of good

faith and fair dealing. The written and oral evidence in this case demonstrates that the Organization's policy to require staff on abolished posts to apply and be considered for vacancies misplaced and shifted the responsibility for searching out and finding suitable positions onto the shoulders of the affected staff. This was contrary to the requirements of staff rules 13.1(d) and (e).

**Respondent's submissions**

25. The Respondent's principal contentions may be summarized as follows:

- a. The termination of the Applicant's permanent appointment was lawful. The General Assembly abolished 59 posts in the Publishing





General in May 2013, a staff representative for DGACM proposed that “[s]election of the staff would be carried out in accordance with the staff regulations and rules, and in full transparency and consultation with the staff, with priority given to the permanent and long-serving fixed-term staff”. This is exactly what happened. In accordance with the staff selection system, staff members were required to apply for the positions that they considered themselves suitable for and compete for those positions.

### **Applicable law**

#### *Applicable law on termination of permanent appointments*

26. Staff regulation 1.2(c) provides:

#### **General rights and obligations**

(c) Staff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations. In exercising this authority the Secretary-General shall seek to ensure, having regard to the circumstances, that all necessary safety and security arrangements are made for staff carrying out the responsibilities entrusted to them;

27. Staff regulation 9.3(a)(i) states:

#### **Regulation 9.3**

(a) The 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 with the terms of his or her appointment or for any of the following reasons:

(i) If the necessities of service require abolition of the post or reduction of the staff;

28. Staff rule 9.6 states in relevant parts:

**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.

...

**Termination for abolition of posts and reduction of staff**

(e) Except as otherwise expressly provided in paragraph (f) below and staff rule 13.1, if the necessities of service require that appointments of staff members be terminated as a result of the abolition of a post or the reduction of staff, and subject to the 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;

(ii) Staff members recruited through competitive examinations for a career appointment serving on a two-year fixed-term appointment;

(iii) Staff members holding fixed-term appointments.

...

(f) The provisions of paragraph (e) above insofar as they relate to staff members in the General Service and related categories shall be deemed to have been satisfied if such staff members have received consideration for suitable posts available within their parent organization at their duty stations.



29. Staff rule 13.1 states in relevant parts (emphasis added):

**Rule 13.1**

**Permanent appointment**

(a) A staff member holding a permanent appointment as at 30 June 2009 or who is granted a permanent appointment under staff rules 13.3(e) or 13.4(b) shall retain the appointment until he or she separates from the Organization. Effective 1 July 2009, all permanent appointments shall be governed by the terms and conditions applicable to continuing appointments under the Staff Regulations and the Staff Rules, except as provided under the present rule.

...

(d) If the necessities of service require abolition of a post or reduction of the staff and subject to the availability of suitable posts for which their services can be effectively utilized, staff members with permanent appointments *shall be retained in preference to those on all other types of appointments*, provided that due regard shall be given in all cases to relative competence, integrity and length of service. ...

(e) The provisions of paragraph (d) above insofar as they relate to staff members in the General Service and related categories shall be deemed to have been satisfied if such staff members have received consideration for suitable posts available within their parent organization at their duty station.

*International standards on retrenchment and retention*

30. The Preamble to the United Nations Charter, in reaffirming faith in fundamental human rights, equal rights, and the dignity and worth of the human person undertakes “to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained”. The Secretary-General’s Note on the Report of the Redesign Panel on the new system of justice A/61/758 (23 February 2007), in recognizing that staff members have no legal recourse to national courts emphasized that

the United Nations as an organisation involved in setting norms and standards and advocating for the rule of law, has a special duty to offer its staff timely, effective and fair justice. It must therefore ‘practice what it preaches’ with respect to the treatment and management of its own personnel. The Secretary-General believes that staff are entitled to a system of justice that fully complies with the applicable international human rights standards.

31. The General Assembly in adopting the statutes setting up the Tribunals by resolution 63/253 established the new “system of administration of justice consistent with the relevant rules of international law and the principles of rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike”.

32. It has been noted that while the United Nations Organization “does not deal with labour matters as such, and recognizes the ILO [International Labour Organisation] as the specialized agency responsible for taking appropriate action for the accomplishment of the purposes set out in [the ILO] Constitution, some UN instruments of more general scope have also covered labour matters”.<sup>1</sup> For example, some provisions concerning employment or labour matters are contained in the 1948 Universal Declaration of Human Rights,



## **Consideration**

### *Receivability*

35. The Respondent submitted that the present application was not receivable because the Applicant's permanent appointment was not terminated and he continued to be employed. Therefore, his retention renders his application moot and not receivable. The Respondent submitted that the Applicant should be precluded from bringing additional claims, such as his subsequent retention against a different post, which were not identified as contested decisions in his request for management evaluation. The Respondent submitted that consideration of such additional claims would be a back-door way of bringing new appeals without following the mandatory step of requesting management evaluation and filing an application on the merits before the Tribunal with regard to these separate claims.

36. The letter of termination dated 31 December 2013 stated in no uncertain terms that the post against which the Applicant had been placed was abolished by the General Assembly effective 1 January 2014, and "as a result, the Secretary-General has decided to terminate [his] permanent employment". The letter further stated that it "constitute[d] the formal notice of termination of [the Applicant's] permanent appointment" and that, "[i]n the event [the Applicant is] not selected for a position, ... [he] will be separated from service not less than three months (90 days) of receipt of this notice".

37. The Applicant's termination never took effect as he was retained against a different post. However, the Applicant states that, although his permanent appointment was not terminated, the decision dated 31 December 2013 was unlawful and caused him harm because he unlawfully lost his post and had to look for alternative employment and, in the process, suffered emotional distress.



41. In *Bye* UNDT/2009/083 (case concerning the United Nations Office of the High Commissioner for Human Rights; no appeal), the Tribunal observed that it was unclear whether the requirement of good faith efforts to find alternative employment applied to staff on non-permanent appointments other than permanent staff on abolished posts. However, the Tribunal noted that the former United Nations Administra



47. In *Pacheco* UNDT/2012/008 (case concerning the Office for the Coordination of Humanitarian Affairs (“OCHA”); affirmed on appeal), the Tribunal dismissed the applicant’s claim that OCHA was obliged to make a good faith effort to find an alternative suitable post. The Tribunal found that the applicant’s fixed-term contract expired and hence staff rule 9.6(e) did not



subject to the following conditions or requirements: relative competence, integrity, length of service and the availability of a suitable post in which the staff members services can be effectively utilized.

...

67. The fact that the Staff Rules provide that in assessing

considered. If that was the intention, the staff rule would have made that an explicit requirement. But most importantly, such a line of argument overlooks the underlying policy, in relation to structural reorganisation, of according preferential consideration to existing staff who are at risk of separation prior to considering others and giving priority to those holding permanent contracts.

...

86. By simply stating that he could not consider the Applicant for any position for which she had not applied and that she could not be considered for placement or lateral move, the Respondent admits that no consideration whatsoever for any such available posts was given to the Applicant. The Administration did not even look for available posts for which the suitability of the Applicant, by way of placement or lateral move, could have been considered before the termination of her appointment took effect.

...

the applicant, who was a permanent staff member, prior to opening the vacancy to others.

51. In *Tiefenbacher* UNDT/2016/183, the Applicant, a former D-1 level permanent staff member of the United Nations Development Programme (“UNDP”), challenged the decision not to “award [him]” a D-1 level position. The Tribunal found that the Applicant was not afforded proper priority consideration for the contested post under the framework established by staff rules 9.6(e) and 13.1(d). The Tribunal found that a proper matching exercise under staff rule 13.1(d) was distinct from a full-scale competitive selection process open to external candidates. The Tribunal found that staff rule 13.1(d) envisaged a matching exercise that would take into account various relevant factors, such as the affected staff member’s contract status, suitability, and length of service.

Former United Nations Administrative Tribunal

52. In Judgment No. 85, *Carson* (1962) (case concerning a former staff member of UNICEF), the UNAdT stated at paras. 8–11 that a good faith effort

Case No. UNDT/NY/2014/018

Judgment No. UNDT/2016/190

56. Although the rulings of the UNAdT referred to above relate to cases involving UNICEF and UNDP, the UNAdT found that a duty to deploy good faith efforts to find alternative employment for the displaced staff member existed for any permanent staff member whose terms of employment were governed by the Staff Regulations and Rules. See, e.g., para. VIII of Judgment No. 1163, *Seaforth* (2003), stating that “where there is an abolition of a 100 series post, the Respondent has an obligation to make a bona fide effort to find staff members another suitable post, assuming that such a post can be found, and with due regard to the relative competence, integrity and length of service

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.

60. In Judgment No. 3437 (2015), at para. 6, the ILOAT stated:

The Tribunal's case law has consistently upheld the principle that an international organization may not terminate the appointment of a staff member whose post has been abolished, at least if he or she holds an appointment of indeterminate duration, without first taking suitable steps to find him or her alternative employment (see, for example, Judgments 269, under 2, 1745, under 7, 2207, under 9, or 3238, under 10). As a result, when an organisation has to abolish a post held by a staff member who, like the complainant in the instant case, holds a contract for an indefinite period of time, it has a duty to do all that it can to reassign that person as a matter of priority to another post matching his or her abilities and grade. Furthermore, if the attempt to find such a post proves fruitless, it is up to the organisation, if the staff member concerned agrees, to try to place him or her in duties at a lower grade and to widen its search accordingly (see Judgments 1782, under 11, or 2830, under 9).

*Legal status of "permanent staff"*

61. The status of a "permanent" staff member signifies a particular type of an employment relationship, whereby the Organization, in recognition of the staff member's exemplary and long service, provides her or him with additional legal protections and guarantees.

62. The historic reasons for the creation and importance of permanent staff were eloquently articulated by Mr. Dag Hammarskjöld, the second Secretary-General of the United Nations, in a lecture entitled "The International Civil Servant in Law and in Fact", delivered at Oxford University on 30 May 1961, several months before his tragic death. The Secretary-General spoke to

the independent nature of the international civil service and, in a key part of his lecture, underlined the significance of permanent status for the staff of the Organization:<sup>3</sup>

A risk of national pressure on the international official may also be introduced, in a somewhat more subtle way, by the terms and duration of his appointment. A national official, seconded by his government for a year or two with an international organization, is evidently in a different position psychologically—and one might say, politically—from the permanent international civil servant who does not contemplate a subsequent career with his national government. This was recognized by the Preparatory Commission in London in 1945 when it concluded that members of the Secretariat staff could not be expected ‘fully to subordinate the special interests of their countries to the

63. It is important to keep in mind the reasons for the creation and existence of an institute of permanent staff in the context of an international organization such as the United Nations. Staff members of the Organization owe their allegiance to no national government. Having complied with all the necessary requirements and criteria for a permanent appointment, and having received such an appointment, they become entitled to certain legal protections and advantages as articulated in the Staff Regulations and Staff Rules, including as compared to staff on other types of appointments. This reasoning applies equally to permanent staff regardless of the type of their contractual arrangement (professional-level, general service-level, or other).

64. Several years prior to Secretary-General Hammarskjöld's Oxford lecture, the UNAdT expressed similar sentiments in one of its earlier judgments, remarking that permanent appointments have "been used from the inception of the Secretariat to ensure the stability of the international civil service and to create a genuine body of international civil servants freely selected by the Secretary-General" (UNAdT Judgment No. 29, *Gordon* (1953)). The UNAdT subsequently remarked that "[p]ermanent appointments are granted to those staff members who are intended for the career service" (UNAdT Judgment No. 85, *Carson* (1962)).

*Alleged breach of General Assembly resolution 54/249*

65. The Applicant submits that the decision to terminate his permanent appointment was contrary to General Assembly resolution 54/249 (Questions relating to the proposed budget for the biennium 2000–2001), adopted on 23 December 1999.

66. General Assembly resolution 54/249 (adopted on 23 December 1999) stated:



*The General Assembly,*

...

59. *Requests* the Secretary-General to undertake a comprehensive review of the post structure of the Secretariat, taking into account, inter alia, the introduction of new technology, and to make proposals in the proposed programme budget for the biennium 2002-2003 to address the top-heavy post structure of the Organization;

60. *Welcomes* the use of information technology as one of the tools for improving the implementation of mandated programmes and activities;

...

62. *Emphasizes* that the introduction of new technology





15. ... [S]ince a staff member holding a permanent appointment as of 30 June 2009 shall retain the appointment until he separates from the Organization, the Secretary-General may not terminate that appointment (i.e., initiate the separation from service) under [staff regulation] 9.3(a)(i). This is an exception to the rule pursuant to which all permanent appointments shall be governed by the terms and conditions applicable to continuing appointments.

...

17. The evidence established that [the Applicant] was granted a permanent appointment prior to 30 June 2009 and has been holding such appointment since then. Therefore, pursuant to Staff [Regulation] 13.1(a), [the Applicant] had retained his permanent appointment until he separated from the Organization. The separation of [the Applicant] cannot be initiated by the Secretary-General, i.e., [the Applicant's] permanent appointment cannot be terminated by the Secretary-General (Staff Rules 9.6(a) and 9.6(b)).

75. This submission advanced by the Applicant is unpersuasive. Staff rule 13.1(a) states clearly that effective 1 July 2009, “all permanent appointments shall be governed by the terms and conditions applicable to continuing appointments under the Staff Regulations and the Staff Rules, except as provided under the present rule [i.e., under staff rule 13.1]”.

76. This means that, in the event of a conflict between staff rules 9.6 and 13.1, the provisions of staff rule 13.1 would prevail as *lex specialis*. However, because the Staff Regulations are superior to the Staff Rules (*Villamorán* UNDT/2011/126), provisions of staff rule 13.1 cannot override the application of staff regulation 9.3(a)(i), which provides that the Secretary-General may terminate continuing appointments, particularly given the language of staff rule 13.1(a), which provides that “permanent appointments shall be governed by the terms and conditions applicable to continuing appointments, except as provided under the present rule”.

77. Notably, staff rule 13.1(d) specifically discusses abolition of posts and reduction of staff, including the order of retention of staff, with preference given to staff on permanent appointments, “provided that due regard shall be given in all cases to relative competence, integrity and length of service”.

78. Therefore, it follows from the language of staff rule 13.1(a), 13.1(d), and staff regulation 9.3(a)(i) that contracts of permanent staff may be terminated by the Secretary-General, provided that it is lawfully done, i.e., that relevant conditions concerning preferential retention are satisfied.

79. Therefore, the Tribunal concludes that the Secretary-General had the legal authority to terminate the Applicant’s permanent appointment.

*Compliance with the requirements of staff rule 13.1*

80. The Applicant submits that the Organization breached its obligations of good faith and fair dealing by failing to respect the protections enjoyed by the Applicant as a permanent staff member. The Applicant submits that the Administration misplaced and shifted the responsibility for searching out and finding suitable positions ul2Ti-2e rshou

the view to retaining those permanent staff members whose posts have been abolished. Even though in assessing the suitability of staff members, due consideration must be given to relative competence, integrity and length of service, nothing in the Staff Rules states that such suitability can only be assessed if that staff member has applied for a post and competed for it against staff on other types of contracts. Rather, under the framework envisaged by staff rules 9.6 and 13.1, it is incumbent upon the Organization to review all possible suitable posts vacant or likely to be vacant in the future, and to assign affected permanent staff members on a priority basis.

82. In the termination letter of 31 December 2013, the Executive Officer wrote:

You are strongly encouraged to apply for all available positions for which you believe you have the required competencies and skills. Should you submit an application, you are invited to so inform the DGACM Executive Office, which will support you in liaising with the Office of Human Resources Management with a view to giving priority consideration to your application.

83. This paragraph demonstrates that, from the outset of the process, the Administration considered, contrary to staff rule 13.1(d) and the extensive jurisprudence hereinbefore cited, that the primary responsibility for finding alternative employment rested with the Applicant, who was to “apply for all available positions” that he felt matched his competencies and skills. This set the overall tone for the subsequent efforts to find an alternative post for the Applicant.

84. The Applicant was able to secure alternative employment. However, the evidence in this case demonstrates that the Applicant was required to compete competitively for available posts, including against non-permanent staff members. Mr. Nandoe testified that the Administration had made a decision to carry out a competitive process, and, therefore, it could not match

permanent staff on abolished posts against suitable vacant posts. This was consistent with Ms. Asokumar's evidence, who testified that, to the best of her knowledge, this was not a matching exercise based on considerations of permanency, length of service, etc., but a competitive process with competency-based interviews. Her evidence was that, if after such a competitive process, one of the remaining suitable candidates would be a permanent staff member, she or he would have priority consideration only at that late stage of the process.

85. The Administration was required to make good faith efforts to find suitable and available posts against which the Applicant could have been placed (*El-Kholy* UNDT/2016/102; *Hassanin* UNDT/2016/181; *Tiefenbacher* UNDT/2016/183). Staff regulation 1.2(c) allows the Administration to reassign staff laterally (see also sec. 11 of ST/AI/2010/3, which specifically permits the placement of staff affected by abolition of posts outside the normal selection process). The evidence in this case, including Mr. Nandoe's testimony, indicates that there were, in fact, available posts against which the Applicant could have been considered as a staff member on continuing appointment affected by post abolition, without having to apply and compete for them. No evidence has been adduced as to whether these available posts would have been at a higher or lower level as compared to the Applicant's former post, and the Tribunal will not speculate in this regard.

86. It is troubling that the Applicant, a permanent staff member on an abolished post, was required—in breach of staff rule 13.1—to apply competitively for vacant positions, let alone compete for them with other, non-permanent staff. There is no record, and indeed the Respondent did not produce any evidence, of any distinction being made during these selection exercises between permanent staff and other categories of staff. The evidence in this case indicates that the Applicant and other permanent colleagues were

competing with staff members on fixed-term and/or temporary contracts. There was no actual preference afforded to permanent staff.

87. Unlike in *El-Kholy*, where the applicant was offered posts which she declined, the Applicant in this case was not offered any positions prior to the abolishment of his post, or subsequent thereto. The Respondent in this case placed not an iota of evidence before the Tribunal to show that the required criteria were applied or considered, such as the Applicant's contract status, suitability for vacant posts, special skills, length of service, competence and integrity, nationality, etc., with a view to positioning him or offering him a position. There was no evidence of him being placed in a redeployment pool or of any effort to match his special skills, experience, taking into account other material criteria with a view to matching him with any vacant, new, or opening positions. The documentary evidence in this case, as well as the oral testimony of Mr. Nandoe, Ms. Asokumar and the Applicant, illustrates that the main method of retention of staff was through a competitive process, without consideration of priority criteria such as contract type or seniority.

88. Although the Administration took certain actions in an effort to find employment for the affected staff, as attested to by Ms. Asokumar—such as, since 2013, training, temporary reassignments to learn new skills, and waiving the ASAT to allow staff in the Trades and Crafts category to apply to posts in General Service category—the Administration not only shifted the onus of finding a suitable post onto the affected staff members, but did not give proper consideration to the distinction between permanent staff, like the Applicant, and other types of staff. As a result, the Administration contravened the requirement of priority for retention of permanent staff and failed to fully honour the material provisions of staff rule 13.1 with respect to the Applicant. As the Tribunal stated in *El-Kholy*, the onus was on the Administration to carry



out a matching exercise prior to opening the vacancy to others, whether by an advertisement or otherwise.

89. Staff rule 13.1 is clear that permanent staff on abolished posts, if they are suitable for vacant posts, should only be compared against other permanent staff—it would be a material irregularity to place them in the same pool as continuing, fixed-term, or temporary staff members. Further, as noted in *Hassanin*, the advertising of a post with an invitation to apply does not give priority to affected staff, nor does it equate with a formal proposal to assign a permanent staff member to a new pos

*Relief*

92. By resolution 69/203, adopted on 18 December 2014 and published on 21 January 2015, the General Assembly amended art. 10.5 of the Tribunal's Statute to read as follows:

5. As part of its judgement, the Dispute Tribunal may only order one or both of the following:

(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph;

(b) Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation for harm, supported by evidence, and shall provide the reasons for that decision.

93. The purpose of compensation is to place the staff member in the same position he or she would have been in, had the Organization complied with its contractual obligations (*Warren* 2010-UNAT-059; *Iannelli*



**Orders**

98. The application succeeds in part.

99. The Applicant is awarded the sum of USD3,000 as compensation for emotional distress.

100.