

January – February 2014

**ILOAT Awards Staff Member 15,000 Euros in Moral Damages
Where Administration Unlawfully Withholds Documents from Appeal Panel**

In Judgment No. 3172 a G-4 secretary working at the CTBTO was given notice that her post was to be abolished, and her contract would be allowed to expire in six months. The grounds eventually proffered were financial difficulties and in particular monies were needed to hire more professional staff in the relevant division. At the very same time this decision was taken, however, the executive head had received instructions from the member states to add more general service staff, and a written recommendation was made to the director of administration to add more G posts, and indeed new G posts were advertised at the executive head's written direction within the next few months. The secretary who was fired received a copy of this memo, which in previous circumstances would be sufficient for a finding that the reason for the abolition of post was false, and an award of reinstatement and moral damages. The ILOAT decided that the abolition, based on the assessment of the internal appeal panel, was lawful. The Tribunal did not mention or assess the evidence showing that new G posts were being added to the Commission thus proving that there was no financial difficulties or that there were was not a reduction of posts in the relevant division or elsewhere, ie., the reasons for the abolition were manufactured. The Tribunal bowed to the findings of the appeal panel which surmised that there were really financial difficulties within the Commission justifying the dismissal of this secretary. The Tribunal thus applied a low standard of review to the findings of the appeal panel. The Tribunal did award the secretary some relief since it found that the administration's blanket and repeated refusal to provide documents requested by the appeal panel constituted a breach of due process, and awarded 15,000 euros in moral damages, a small fine which the Commission was certainly happy to pay in these circumstances.

In other news, in order to address a backlog of cases, the ILOAT announced that it would be holding a third session this year to be held in February. The ILOAT has been taking over 2 years to decide cases so this is some welcome news, and perhaps an additional session will become a permanent feature each year. It used to be that the ILOAT would decide appeals within a year or less.

**Laurence Fauth, FICSA's Legal Advisor, provides counsel and advice to international civil servants and staff unions. You can visit his website for more information: www.unattorney.com. The information and content contained in this newsletter is for general information only and does not constitute legal or other professional advice, nor does it necessarily express the views of FICSA. You must not rely on any information or content contained in, or omitted from, this newsletter without obtaining independent legal advice.*