

LAW OFFICE OF LAURENCE C. FAUTH*
1717 K Street, Suite 600, Washington, D.C. 20036
Tel: 202-204-2220; Fax: 202-331-3759
Website: www.unattorney.com; e-mail: lcfauth@unattorney.com

TIP OF THE MONTH

February 2007

Internal Appeals: Do Not Kiss Your Monetary Damages Goodbye

The awards handed out by the ILO Administrative Tribunal in successful appeals are in many cases small. In some cases, it even finds an egregious breach of the staff member's rights, but when you read the amount awarded in compensation, you are left scratching your head. Sometimes, the fault lies with the staff member who did not ask for the damages during the internal appeal. The Tribunal follows a basic principle of law: **Waiver** – if you have not made the claim for moral damages (or costs, etc.) during the internal appeal, the Tribunal will not award them even if you are successful on the merits. You have so to speak kissed your right to full compensation goodbye.

It is therefore important for the staff association/union to remind its staff members during the internal appeal to claim compensation that is recognized by the Tribunal, including **material damages** which consists of the salary, benefits and other emoluments the staff member lost because of the adverse decision; **interest** on the material damages; **consequential damages** consisting of costs of maintaining health insurance (one example); **moral damages** for the injury to the staff member's dignity and reputation caused by the adverse decision; **punitive or exemplary damages** if the facts show that the organization acted recklessly; and the **costs** for any legal assistance, translation services, etc. that were incurred in prosecuting the internal appeal. The Tribunal will generally not grant consequential damages, moral damages, interest, punitive damages, or costs if they were not asked for in the internal appeal. In Judgment No. 2538, the Tribunal held that since "moral damages were made for the first time when the complaint was filed with the Tribunal . . . they have not been the subject of a final administrative decision" and therefore were rejected. It is important to ask for the above elements of damages even if you think, for whatever reason, you do not deserve moral damages, especially since the Tribunal will also require the former staff member to offset any award by net earnings from other employment.

With respect to moral damages, the Tribunal normally awards between €5,000 and €20,000 in most cases that are successful on the merits. I handled a very egregious case of mobbing/harassment against a P-4 staff member at the CTBTO, for which the Tribunal awarded €35,000 in moral damages (Judgment 2524). The Tribunal has not yet decided that these type of injuries require meaningful and adequate compensation.

* I specialize in the representation of international civil servants, and serve as legal advisor to several staff unions/associations of international organizations, some of which are based in Vienna, Austria. For further information, please send me an e-mail or visit my website.