UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2010/014 (UNAT 1584)
Judgment No.: UNDT/2010/129
Date: 22 July 2010
Original: English

Before: Judge Coral Shaw

Registry: Geneva

Registrar: Víctor Rodríguez

VALLE FISCHER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:
Laurent Hirsch
Antonio Lombardi

Counsel for respondent:
Bettina Gerber, UNOG

Introduction

1. The applicant was employed as a G-2 level Security Officer by the Security and Safety Section of the United Nations Office at Geneva (UNOG), on a number of short-term contracts from February 2000 until his separation in February 2006. While still employed, he applied for a G-3 position, was interviewed for it, but was not selected. Based on information gathered at the selection process, it was decided that he did not have the necessary efficiency, integrity and competence to hold the position of a security guard and the decision was made to separate him.

2. The applicant appealed to the Geneva Joint Appeals Board (JAB). The JAB panel recommended the payment of one week of salary and two months for moral damage suffered by the applicant. The Secretary-General accepted this recommendation and paid the applicant CHF10,500.00.

3. The applicant filed an appeal to the former United Nations Administrative Tribunal (UNAT) on 10 March 2008. When the former UNAT was abolished on 31 December 2009, the matter was transferred to the United Nations Dispute Tribunal (UNDT).

4. The applicant contests the decision to separate him from 10 February 2006.

The Issues

5. The nature of the case and the issues to be decided shifted significantly from those originally pleaded in the appeal to the former UNAT. During directions hearings and the subsequent oral hearing, both parties made appropriate concessions which resulted in the issues being refined and reduced.

6. Counsel for the respondent conceded that the applicant's employment was governed by a short-term contract. As the respondent was not in a position to prove otherwise, it also conceded that the applicant had been terminated as a result of the selection process, rather than not renewed, and that the respondent did not give the required notice of termination. It is now the respondent's position

that although the procedure for separation was wrong, the applicant has been appropriately and adequately compensated.

7. Counsel for the applicant advised that the applicant did not wish to argue the issue of whether and when short-term contracts could be deemed to have been converted into fixed-term contracts.

8. The remaining issues for determination are therefore:

a. Who had the authority to terminate the applicant's employment?

b. Was the applicant's short-term contract terminated for reasons of misconduct and if so, was the correct procedure followed?

c. Was the non-selection of the applicant influenced by bias?

d. Whether principles of reasonable notice apply to termination of a short-term contract?

e. What is adequate compensation for the wrongful termination?

Facts

9. These facts are extracted from the agreed statement of facts, witness statements of evidence and the oral evidence of the witnesses at the hearing. Apart from the applicant, the Tribunal called the witnesses nominated by the applicant to ensure that those witnesses were not subject to any retribution which they said they feared if they were seen to be partial to one side.

10. The work experience of the applicant prior to his employment as a Security Officer at UNOG was a matter of contention. Alleged discrepancies in what he wrote in his personal history form when applying for the position and what he said at the interviews were given as the reason for the decisions that were ultimately reached, including the decision to terminate his employment. It is not for the Tribunal to determine the rights and wrongs of the facts which led to the decision but to examine the process which led to the conclusions reached by the Administration.

11. The applicant, who is Chilean, performed his military service in Chile. At that time, he had the opportunity to collaborate with the Chilean Police

("Carabineros") but was not himself a police officer. After moving to Switzerland, he worked from September 1991 until February 2000 as a "magasinier" at the International Civil Servants' Cooperative (SAFI) located in the Palais des Nations, but was not a UN staff member at that time. His principal job at SAFI was to stack the shelves and give customer service. He was also required on occasions to keep a look out for shoplifters.

12. He entered the service of UNOG on 23 February 2000 as a Security Officer at the G-2 level in the Security and Safety Section on a short-term contract. At his initial recruitment, the applicant was not tested for technical competence and aptitude for work as a Security Officer. He was employed on the basis of the information contained in his personal history form. His personal credentials were never verified.

13. He was engaged at UNOG for six consecutive years on short-term contracts. The last signed contract in his personnel file covers the period from 17 July 2005 to 31 December 2005. However, he continued to work as normal until 9 February 2006. The applicant told the Tribunal that it was planned that he would work up to March 2006. Although he had not been given a contract after 31 December 2005, he said he was used to working without one. It had often occurred during his employment that one short-term contract expired before the new one was finalized.

14. The continuation of the applicant's work was regularly recommended by the Security and Safety Section. His performance was rated « bonne » in the years 2000 and 2004.

15. From the evidence of witnesses employed at the relevant time in and around the Safety and Security Section at UNOG and the submissions of counsel, there is little doubt that there was a need for reform of the system of employment of UN Security Staff. Witnesses spoke of perceived unfairness in selection of security officers for promotion and training, which in their opinion affected the applicant's chances of professional development and advancement. There was a need to professionalise the service and to regularise the contractual status of the employees.

16. A new Department of Safety and Security was established in January 2005 as part of the United Nations Secretariat and a large number of new Security Officer posts, including at Geneva, were created. A wide-ranging recruitment campaign was launched in March 2005. A large number of vacancies were announced. In March 2005, the applicant applied for one of the sixteen advertised posts of Security Officer (G-3). He continued to be employed on short-term contracts through 2005.

17. The selection procedure was highly structured. An External Security Officer Specialist was engaged to participate in the interviews and a panel was convened to make recommendations of suitable candidates for the advertised positions to the Officer-in-Charge of the Security and Safety Section. The Officer-in-Charge was responsible for making the final decision. In addition to the usual requirements of clerical tests, medical examination, firearm testing, and interviews, all applicants were required to take a written exam to check their ability to communicate in French and English and to write reports, as well as a psychological test to check their aptitude to carry a firearm.

18. The interview panel drew up a competency-based interview sheet to rank the candidates who had been interviewed. The competencies were: 1. background experiences/knowledge/professionalism, 2. integrity/respect for diversity, 3. accountability, 4. client orientation, 5. teamwork, 6. communication, and 7. technical competency/knowledge, skills, expertise. The interview panel also briefly commented on each candidate. Each candidate was required to take a psychological test.

19. The applicant took the test and was interviewed in August 2005. The External Security Officer Specialist, who had been engaged solely for the selection process, told the Tribunal that the panel had two areas of doubt about the applicant: the extent of any security work the applicant had done while working at SAFI and his claim that he had worked for the "Carabineros" in Chile. There were also concerns about the applicant's reasons for immigrating to the United States of America and Switzerland. He said that in view of these concerns, the applicant's integrity was seriously put into question. He was convinced the applicant had not told the truth during the interview.

20. Nevertheless, as the applicant had worked for several years under short-term contracts, it was decided to offer him the opportunity to be interviewed again in September 2005.

21. The applicant told the Tribunal that he thought the second interview was to clarify his role at SAFI because from their questions at the first interview, he thought the panel had misunderstood that he had represented that he had been head of security. One panel member had accused him of lying about his job there, so he took a document to the second interview to clarify that issue. He described how the same panellist had asked him questions about his wife before being stopped by other panellists. That panel member was also angry about the additional information presented by the applicant and raised further questions about his work with the "Carabineros". The applicant told the Tribunal that he expressed a few memories about his collaboration with the "Carabineros" but as it had been a short term and over 20 years ago, his memories were not precise.

22. After consideration, the panel awarded the applicant 21 points and ranked him 36 out of 39 candidates. He was not recommended for the position. It was noted on the interview sheet that the applicant had not passed the written language tests although this information did not influence the ranking of the candidates. The psychologist's report classed the applicant in category "D", the second last of five categories A to E. This signified that care had to be exercised at time of the recruitment.

23. After the second interview, the Security and Safety Section, first directly and then through the Administration, made enquiries into the applicant's past work experience. In December 2005 and in January 2006, it was confirmed that the applicant was not registered as having worked with the "Carabineros" although he had served in the Chilean military during that period of time. The applicant himself also contacted the Chilean Consulate in Berne, which transmitted to him a certificate concerning his military service in the Chilean army.

24. The panel confirmed its previous assessment and recommended the non-selection of the applicant for the G-3 post. The main reason for non-selection

was that the applicant did not have the standard of integrity required within the United Nations. In December 2005, the applicant was briefly interviewed by the Officer-in-Charge of the Security and Safety Section (SSS) who was reviewing the recommendations before making the final decisions.

25. The panel also recommended against the continuing employment of the applicant. This was revealed in a letter from the Officer-in-Charge, SSS, to the Officer-in-Charge, Human Resources Management Service (HRMS), dated 25 January 2006, which was produced by the respondent after the hearing.

26. On 9 February 2006, the applicant was called to a meeting with the Chief, SSS, the Assistant Chief, SSS, and a Human Resources Officer. The applicant wanted to have a representative of the staff union with him at the meeting but it was decided by the Administration that the staff union representative should not participate as it was just a working meeting. During the meeting, the applicant was informed verbally that not only had he not been selected for the post for which he had applied, but that his short-term contract would not be renewed beyond 10 February 2006. The same day, two personnel actions were approved concerning the applicant: the first one indicated that the applicant had been re-employed on 1 January 2006 and that his short-term contract would expire on 10 February 2006; the second one put into effect the separation of the applicant from the UN on 10 February 2006. Those actions were internal to the Administration and were not communicated to the applicant until the intervention of his lawyer when he was advised in writing of the decision taken by the UNOG Security and Safety Section not to renew his short-term contract beyond 10 February 2006. The reasons for this decision were not given at that time.

27. It took a formal request for review for the applicant to be given reasons for the separation. On 13 July 2006, the Officer-in-Charge of the Administrative Law Unit, Office of Human Resources Management, New York, transmitted to the applicant's lawyer the decision that the Secretary-General upheld the decision to separate the applicant. In her response, the Officer-in-Charge of the Administrative Law Unit included a copy of the comments of the Officer-in-Charge, HRMS, UNOG, which said that the applicant had not been

recommended for a G-3 post in the Security and Safety Section for the following reasons:

> (a) He was not recommended by the Interview Panel who interviewed him twice (in August and September 2005);
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> (b) He was not recommended by the Officer-in-Charge of the Security and Safety Section, who interviewed him in December 2005 and endorsed the Panel's recommendation;
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> (c) He did not meet the languages criteria required in the vacancy announcement since he did not succeed in the mandatory language test;
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> (d) He did not pass successfully the psychological evaluation since the psychologist had reservations regarding his ability to carry a firearm;
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> (e) He provided contradicting information with regard to his past experience with the police forces in Chile (Carabineros). Indeed after verification with the "Carabineros", it appeared that [he] never worked as a policeman as stated during the interview… This information was checked through two different channels. When confronted with this information during a meeting with the former Officer-in-Charge of the Section, [he] recognized that he never worked as [a] policeman but was in the military.
>
> In light of the above, the Security and Safety Section decided not to recruit [the applicant] any more even on short-term appointments.

28. The applicant told the Tribunal that the separation was extremely brutal for him. It was abrupt, a real shock and he did not understand what was happening. In spite of requests, UNOG did not give him a work certificate until January 2007 and he remained unemployed until May 2007. When he was eventually given the work reference, it gave no details and no mention of the quality of his work. As his last job was at the UN, he was not entitled to unemployment benefits.

29. Although the mandate of the interview panel was to consider the suitability of candidates for the advertised vacancies, it went further and made a recommendation about the continuing employment of the applicant by the UN. The decision to terminate the applicant's contract and separate him from the UN was made by the Chief, SSS.

30. I find as a matter of fact that the applicant went through the selection process justifiably believing that all that was at stake was his selection or non-selection for the G-3 position. Although he was aware of the major structural changes in the organization of the Security and Safety Section, he was not advised nor was he aware that if he failed to be selected for one of the advertised posts, he would not be engaged as a Security Officer again. He was not aware that he was being assessed for his suitability for continuing employment. In the absence of a written short-term contract, he believed that, at the least, he would continue to be employed at least until March 2006 with the possibility, but not certainty, of further short-term contracts after that.

Parties' contentions

31. The applicant's main submissions are:

a. The respondent has failed to prove that the decision to terminate the employment of the applicant was made by a properly delegated person;

b. Non-selection and termination are two different processes. The interview panel only had authority to make a recommendation about selection but the process and reasons given for termination were the same as those for non-selection. The position taken by the Administration in the proceedings indicates that the Administration did not initially intend to proceed with termination and therefore did not follow the proper termination procedure;

c. The reason for terminating the employment of the applicant was his lack of integrity based on his alleged lies to the interviewers. Such an allegation would justify disciplinary proceedings to be initiated by the Secretary-General in accordance with former staff rules 309.2 and 310.1. As these proceedings were not instituted, termination was made without authority and is invalid;

d. In relation to bias, counsel for the applicant referred to the problems the applicant had had prior to the restructuring and the

general atmosphere alluded to by some of the witnesses. He invited the Tribunal to assess the case against that background.

32. The respondent's main submissions are:

a. Employees on short-term contracts have no expectancy of renewal of that contract and there is no evidence of any promise to the applicant that would give rise to a legitimate expectation that his contract would be renewed;

b. The respondent accepted that this was a termination of a short-term contract. Former staff rule 309.3 requires that an employee who is being terminated under these circumstances should receive one week's notice or equivalent compensation. It was acknowledged that this was not given to the applicant and this amounted to a procedural flaw;

c. The Secretary-General has a wide discretionary power to terminate a short-term contract at any time in the interests of the UN provided that power is not abused. At the request of the Tribunal for evidence of the delegation, the respondent produced an administrative issuance on delegation of authority which contained a note by the Secretary-General about administration of the 300 series of the Staff Rules. The respondent also submitted a memorandum dated 28 April 2005 from the Department of Safety and Security, Division of Headquarters Security and Safety Services, New York, to all Chiefs of Security at Offices away from Headquarters requesting them to devise a policy for recruitment procedures;

d. The termination was justified *inter alia* because it is in the interests of the UN to employ only employees with integrity. The applicant did not meet this standard. The finding was not such as to require a disciplinary process but was sufficient to justify non-renewal;

e. Any award of moral damage must take into account the fact that the applicant had no expectancy of renewal. In any event, he has received compensation which is adequate.

Discussion of the issues

Issue 1. Who had the authority to terminate the applicant's employment?

33. The respondent was requested by the Tribunal to produce evidence that the Officer-in-Charge, SSS, UNOG, was authorised to recommend the separation of the applicant and that HRMS, UNOG, had the authority not to renew or to terminate the applicant's short-term contract.

34. The only document submitted by the respondent which refers to delegation of authority in the administration of the 300 series of the Staff Rules is a Note by the Secretary-General A/54/257 headed "Administrative issuance on delegation of authority" dated 18 August 1999, which counsel for the respondent submitted following the hearing[1]. Paragraph 8 of the note reads:

> Originally, the 300 series of the Staff Rules covered only short-term staff appointed for a period not exceeding six months. Short-term staff are recruited and administered at offices away from Headquarters without reference to the Office of the Human Resources Management.

35. The respondent also produced a memorandum dated 28 April 2005 from the Department of Safety and Security, Division of Headquarters Security and Safety Services, New York, to all Chiefs of Security at Offices away from Headquarters, which states *inter alia*:

> Please review your present recruitment procedures in view of the practice in New York and expedite discussions with the Human Resources divisions at your duty stations in order to explore whether a similar policy could be adopted.

36. The selection process for posts in the General Service category in Geneva is detailed in information circular No. 17 (IC/Geneva/2003/17: New Staff

[1] This issuance was a response to a request by the General Assembly in 1999 for a consolidated and comprehensive compendium of all administrative circulars on the delegation of authority.

Selection System for General Service Staff in Geneva). This circular provides the following:

> The appointment and promotion of candidates to posts at the G-1 to G-4 levels will be made based upon the recommendation of the Programme Manager subject to approval by the Director-General, without reference to a review body.

Paragraph 8 states:

> [T]he Programme Manager's recommendation for promotion and/or recruitment of a candidate against a vacant post is subject to approval by the Director-General, UNOG. HRMS will notify the selected candidate, as well as the Department/Service concerned about the final decision.

37. These documents are therefore limited to appointment and promotion. It is clear that UNOG had the power to recommend and select candidates for vacant G-1 to G-4 posts. The documents do not, however, refer to termination and are therefore not applicable to the ending of the applicant's employment.

38. The employment of staff appointed on contracts of limited duration, otherwise known as short-term contracts, was formerly governed by the 300 series of the Staff Rules. These rules state that they are to be read in conjunction with the Staff Regulations of the United Nations, which "embody the fundamental conditions of service and the basic rights, duties and obligations of the United Nations Secretariat… The Secretary-General, as the Chief Administrative Officer, provides and enforces such Staff Rules, consistent with the principles expressed in the Staff Regulations, as he considers necessary."

39. The starting point is therefore the Staff Regulations contained in ST/SGB/2002/1, which were in force at the relevant time. Article IX is a general provision which preceded the more specific rules of termination. It is headed "Separation from Service". In that article, staff regulation 9.1 gave the Secretary-General the power to terminate the appointment of staff. In the case of staff other than permanent appointees or staff on fixed-term appointments, the Secretary-General could at any time terminate the appointment if, in his or her opinion, such action would be in the best interests of the United Nations.

40. Chapter IX contained the rules for such terminations, including a definition of termination which materially reads:

> A termination within the meaning of the Staff Regulations is a separation from service initiated by the Secretary-General, other than retirement... or summary dismissal for serious misconduct.

41. The only types of termination included in Chapter IX are "abolition of posts and reduction of staff". "Resignation", "retirement" and "expiration of fixed-term appointments" are not regarded as termination for the purposes of Chapter IX.

42. Article X was headed "Disciplinary Measures". Staff regulation 10.2 enabled the Secretary-General to impose disciplinary measures on staff members whose conduct is unsatisfactory. The following Chapter X contained disciplinary measures and procedures. It defined misconduct and set out the procedure to be followed in disciplinary cases.

43. The scheme of the rules was therefore that Article IX and its corresponding Chapter provided the powers and procedures for the termination of staff where there was an abolition of posts or a need for reduction of staff. Other terminations for reasons of discipline were governed by Article X and its corresponding Chapter of procedures.

44. The specific rules for termination of 300-series appointments were found in the 300 series of the Staff Rules, which were to be read in conjunction with the Staff Regulations. Termination of 300-series appointments could be by an administrative decision under former staff rule 309.2 or a disciplinary measure under former staff rule 310.1 (set out below). Each of these rules referred to the Secretary-General as the decision maker. ST/AI/234/Rev.1, which deals with the administration of the Staff Regulations and Staff Rules, does not expressly refer to the delegation of authority for 300 series. It does provide that termination under staff regulation 9.1 is a matter reserved to the Secretary-General, with exceptions. Those exceptions include the authority to terminate under 9.1. However, the authority to terminate as a result of disciplinary measures has not been delegated by ST/AI/234/Rev.1 but is reserved to the Secretary-General.

45. The selection process in the present case was conducted on the basis of a policy adopted and administered by UNOG. The termination resulted from the application of that policy and was carried out without reference to the Secretary-General. If the termination of the applicant were of the type specified in staff regulation 9.1, i.e. the abolition of posts and reduction of staff, unless the power lay with UNOG, it was reserved to the Secretary General.

Issue 2 (a). The reason for the termination of the applicant's short-term contract

46. The decision not to select the applicant for the G-3 post for which he had applied and the decision to terminate his contract were connected even though the interview panel only had the power to recommend selection or non-selection for the post. The evidence established without doubt that while the panellists were concerned about the applicant's competence, the primary reason for his non-selection was the perceived lack of the applicant's integrity. For this reason the panel not only recommended his non-selection, it also recommended that he should not be further employed by the UN. The panel believed that he had lied about his duties while employed at SAFI and about whether he had been employed by the "Carabineros". This was confirmed in the evidence of the External Security Officer Specialist to the Tribunal who, when asked for the reasons for non-selection, emphasised his serious concerns about the applicant's lack of integrity.

47. Following the interview process and prompted by the recommendation from the panel that the applicant should not continue to be employed by the UN, the Officer-in-Charge of the Security and Safety Section decided that the applicant lacked the necessary ability and integrity required for him to either be appointed to the new post or to continue as a Security Officer on short-term contracts and recommended his termination. This was confirmed by HRMS at UNOG.

48. I conclude that the termination was not because the applicant's post was being abolished or that staff were being reduced. It was because he was deemed to have breached the requirements of integrity required of an international civil servant and did not meet the standards of competence required.

Issue 2 (b). Was the correct procedure followed?

49. The nature of the action taken against the applicant dictates what procedure should have been followed.

50. Former staff rule 309.2 gave the Secretary-General a discretionary authority to terminate a short-term appointment. This was in the nature of an administrative rather than a disciplinary action:

> (a) A termination within the meaning of the Staff Regulations is a separation from service initiated by the Secretary-General, other than summary dismissal for serious misconduct.
>
> (b) The appointment of a staff member appointed under these Rules may be terminated at any time if, in the Secretary-General's opinion, such action would be in the interest of the United Nations.

51. Terminations under staff rule 309.2 are for the same purposes as those in Article IX and Chapter IX, i.e., where the requirements of the UN system mean that there is no longer a position available for the employee. There is no pejorative aspect in such a termination; it is an organisational decision or, as stated in staff regulation 9.3, because of the "necessity of the service". This is consistent with the lack of any due process protections for employees in Chapter IX or staff rule 309.2. The procedure does not require adverse findings against an employee before he or she can be terminated under this article.

52. On the other hand, separation as a disciplinary measure was governed by former staff rule 310.1. The relevant parts of that rule are:

> (a) Failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant may amount to unsatisfactory conduct within the meaning of staff regulation 10.1, leading to the institution of disciplinary proceedings and the imposition of disciplinary measures for misconduct…
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> (c) In any case involving possible disciplinary action, the Secretary-General may refer the matter to a standing Joint Disciplinary Committee or may establish, on an ad hoc basis, machinery to advise him before any decision is taken.

> (d) No disciplinary proceedings may be instituted against a staff member unless he or she has been notified, in writing, of the allegations against him or her and of the right to seek the assistance of counsel in his or her defence at his or her own expense, and has been given a reasonable opportunity to respond to those allegations.
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> (e) Disciplinary measures under these Rules may take one or more of the following forms:
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> (i) Written censure;
> (ii) Suspension without pay;
> (iii) Fine;
> (iv) Separation from service, with or without notice or compensation in lieu of notice;
> (v) Summary dismissal.

53. The separation of the applicant was not an administrative termination of his short-term contract under former staff rule 309.2. It was not done for organisational necessity and it was not done because of the expiry of the applicant's contract. At the time of his separation, the applicant was employed on a contract which was understood by him to be a short-term contract. It was not however in writing and was therefore of indeterminate length. The applicant had not been given a written contract to sign and no end date for the contract had been mutually agreed with him before or after he began work following the expiry of his last contract on 31 December 2005. No notice was given.

54. The termination of the applicant had the form and substance of a disciplinary measure. First, the applicant was given no notice such as he would have been entitled to if it were a termination under former staff rule 309.2. Second, the main reason given for the applicant's permanent separation from service was that he lacked the core value of integrity required of a UN staff member, an adverse finding against the applicant. The person who made this decision believed that the applicant had lied about at least on two matters in his interview for the G-3 position. It is clear from the evidence that as a result of the selection process, it had been decided that he did not meet the standards of an international civil servant.

55. I conclude that whatever action the administration intended to take against the applicant, the termination was in effect a disciplinary measure which resulted

in either separation from service without notice or compensation (former staff rule 310.1 (e) (iv)) or a summary dismissal (former staff rule 310.1 (e) (v)).

56. While the Administration has a broad discretion to determine what action is to be taken against a staff member in a specific case, such discretion is limited to deciding if disciplinary proceedings for misconduct are to be instituted. If the Administration decides to take a disciplinary measure against a staff member, then the rules require that certain basic requirements are met: notice in writing of the allegation, the right to seek the assistance of counsel and a reasonable opportunity to respond to the allegations. This was confirmed in *D'Hooge* (Judgment UNDT/2010/044). If these requirements are not met, then the decision is unlawful.

57. In this case, the decision was made that not only would his current contract not be renewed, but that he was not fit for further service with the UN because he lacked integrity. Although this was a disciplinary measure, the applicant received no written notice of the allegation, no advice of his right to seek the assistance of counsel and no opportunity to respond to the allegations that related to the termination. He did not know he was to be separated from the UN until the day it happened. Until then, he believed that he was only in jeopardy in relation to his application for the G-3 position.

58. The disciplinary measure had the detrimental result of abruptly ending the applicant's otherwise unblemished six-year employment and effectively precluded him from future employment with the UN.

59. I find that the separation of the applicant from service with the UN was unlawful for two reasons: first, the decision was made by a person who had no delegation to do so because the reason for termination was a disciplinary measure. Second, the procedure was in breach of the requirements for disciplinary measures in former staff rule 310.1.

Issue 3. Was the Panel influenced by bias?

60. The interview panel did not recommend the selection of the applicant for the G-3 position. Although the applicant believed (most likely on the basis of his

previous negative experiences while employed at UNOG) that the panel was biased, there was not sufficient evidence of this. The constitution of the panel, the use of an independent expert to participate in the process, the transparent and thorough procedure and the willingness of the panel to give the applicant a second interview does not support the applicant's contentions.

Issue 4. Notice

61. If the applicant had been lawfully terminated at the expiry of his contract of short duration, he would have been entitled to notice as stipulated in the Staff Rules. Because his separation was unlawful, he lost that opportunity and the question for the Tribunal is the extent of any notice he should receive.

62. The principles of reasonable notice do not generally apply to termination of short-term contracts covered by the Staff Rules as the rules legislate for such notice as follows:

Former staff rule 309.3

> (a) Staff appointed under these Rules whose contracts are to be terminated prior to the specified expiration date shall be given not less than one week's written notice in the case of locally recruited staff members and two week's written notice in the case of non-locally recruited staff members, or as otherwise provided in the letter of appointment.
>
> (b) In lieu of the notice period, the Secretary-General may authorize compensation equivalent to salary and applicable allowances corresponding to the relevant notice period, at the rate in effect on the last day of service.

Former staff rule 309.4

> In accordance with paragraph (e) of annex III to the Staff Regulations, staff members appointed under these Rules shall not be paid a termination indemnity unless such payment is specified in the letter of appointment.

63. However, none of these provisions apply in this case. The applicant's contract did not have a specified expiration date because there was no contract or letter of appointment. In the absence of any end point for the short-term contract, the period of notice to which the applicant is entitled can only be calculated in

terms of what would, in all the circumstances of the case, be considered reasonable.

64. The relevant circumstances in this case are that although the applicant did not have a written short-term contract, he was aware that his employment was not permanent and was of limited duration planned to March 2006. Beyond that date, he had no legitimate expectation of renewal.

65. From this, I conclude that the reasonable period of notice that his employment would end was six weeks calculated from the date he was told of the termination to the end of March 2006.

Issue 5. Compensation

66. The applicant submitted that although the natural remedy for an invalid termination would be reinstatement of the applicant to his former post, this would not be reasonable from a practical perspective and therefore the applicant seeks financial compensation of between 12 and 24 months' salary.

67. The amount of compensation for the unlawful separation must be proportionate to the harm caused to the applicant. On the facts of this case, it is also relevant that the applicant had no legitimate expectation of career advancement while working under short-term contracts. On the other hand, he had made himself available and performed satisfactorily as a security officer for six years. The nature of the termination meant that he was no longer considered suitable for future work at the UN. He suffered a loss of that opportunity without having proper opportunity to answer the case against him.

68. It is clear from the evidence that he was significantly prejudiced following the separation. As an ex-UN staff member, he could not receive unemployment benefits and it is highly probable that the lack of a work certificate and any positive statement from the UN about his work performance hampered his chances of obtaining employment.

69. In all the circumstances, the applicant is awarded the equivalent of one year's net base salary calculated at the rate of payment at the date of his separation.

Conclusion

70. In view of the foregoing, the Tribunal DECIDES:

1. The application is successful;
2. The applicant is awarded six weeks' payment in lieu of notice minus the one week's notice he has already received;
3. The applicant is further awarded the equivalent of one year's net base salary minus the two months' compensation awarded by the Secretary-General, which he has already received;
4. Both payments are to be based on the applicant's net base salary at the time of his separation;
5. There is no order for costs.

(*Signed*)

Judge Coral Shaw

Dated this 22nd day of July 2010

Entered in the Register on this 22nd day of July 2010

(*Signed*)

Víctor Rodríguez, Registrar, Geneva