



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2010/021
(UNAT 1608)
Judgment No.: UNDT/2010/130/Corr.1
Date: 27 July 2010
English
Original: French

Before: Judge Jean-François Cousin
Registry: Geneva
Registrar: Víctor Rodríguez

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:

Anne Fosty

Counsel for respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Notice: In accordance with article 31 of the rules of procedure of the United Nations Dispute Tribunal, this judgment has been corrected for the purposes of publication.

Introduction

1. The applicant, a former staff member of the International Criminal Tribunal for the former Yugoslavia (ICTY), appeals against the decision to terminate his appointment, the way in which a complaint against him for sexual harassment was treated, and the caution that the Administration issued to him following that complaint.

2. In July 2008, he filed an application before the former United Nations Administrative Tribunal (UNAT) against the Secretary-General's decision of 17 December 2007 to accept only part of the recommendation of the Joint Appeals Board (JAB) and to award him compensation of only eight months' net base salary.

3. The applicant seeks:

- a. The payment of compensation in the amount of two years' salary for constructive dismissal;
- b. The payment of compensation for the failure to undertake his formal performance appraisal;
- c. The payment of compensation for the damage caused by the failure to respect his rights during consideration of his request for suspension of action on the decision to terminate his appointment;
- d. The payment of 15 months' salary, as recommended by JAB, plus nine additional months, making a total of 24 months' salary for having been terminated while on sick leave;
- e. The payment of compensation for the moral, professional and physical damage suffered as a result in particular of a press conference during which his supervisor ensured that a question would be asked about the complaint of sexual harassment made against him;

- f. Annulment of the caution he was given and removal of it from all records, including at ICTY;
 - g. Payment of his legal costs.
4. Having been pending before the former United Nations Administrative Tribunal (UNAT), the case was, pursuant to the transitional measures set out in General Assembly resolution 65/253, transferred to the United Nations Dispute Tribunal (UNDT) on 1 January 2010.

Facts

5. The applicant joined ICTY at The Hague on 1 July 1998 at the P-5 level. He remained in service until 16 January 2001, when he resigned.

6. In November 2001, he was again recruited by ICTY, this time at the D-1 level, to prosecute a senior Serbian official. His appointment was exceptionally made without the circulation of a vacancy announcement. The post, which was specially created, was initially funded by an earmarked contribution from the United Kingdom and subsequently from the ICTY budget for temporary staff. He had a number of fixed-term contracts (100 series of the then Staff Rules), the last of them covering the period from 1 January to 31 December 2006. In March 2006, the Administration decided, in view of the death of the above-mentioned senior Serbian official, to abolish the applicant's post. His appointment was terminated on 31 July 2006.

7. On 19 December 2005, a junior Professional officer with ICTY ("the complainant") working in the applicant's team made a complaint of sexual harassment by the applicant to the Chief Prosecutor, ICTY.

8. By memorandum dated 25 January 2006, the complainant addressed the same complaint to the Assistant Secretary-General for Human Resources. In substance, the complainant alleged that the applicant had made unwelcome sexual advances to him and had harassed him sexually for

some two years to the point where his work had been affected and he had asked to be moved to another team.

9. By memorandum dated 22 February 2006, the Assistant Secretary-General for Human Resources informed the applicant of the composition of the investigation panel established in accordance with administrative instruction ST/AI/379 to look into the above-mentioned complaint. The panel's investigation took place from 6 to 17 March 2006.

10. On 6 March 2006, the applicant underwent a surgical operation.

11. On 7 March 2006, the investigation panel had a telephone conversation with the applicant in the course of which it informed him in general terms of the nature of the complaint.

12. On 10 March 2006, the investigation panel transmitted a copy of the complaint to the applicant.

13. On 11 March 2006, the senior Serbian official whom the applicant was responsible for prosecuting died at The Hague, where he was imprisoned.

14. On 12 March 2006, the applicant submitted his response to the complaint to the investigation panel and on 13 March 2006, he had his first interview by the panel.

15. On 14 March 2006, a final hearing in the above-mentioned trial officially closed the case.

16. On 15 March 2006, the applicant had a second and final interview by the panel.

17. By memorandum dated 22 March 2006, the Chief of Administration, ICTY, informed the applicant that, following the death of the senior Serbian official whom he was responsible for prosecuting and the abrupt termination of the case for which he had been specifically recruited, the Office of the Prosecutor had recommended the termination of his appointment "as per the contract terms". However, the Administration had decided that, pending the

outcome of the on-going investigation, he would not be terminated but placed on "special leave with full pay". Once the results of the investigation were known, his situation would be reviewed and a contract completion date would be set.

18. On 12 April 2006, the investigation panel submitted its report. The events it examined mostly date from the second half of 2003. The panel found that, while the applicant acted unwisely towards the complainant given the supervisor-subordinate relationship that existed between them, there was insufficient evidence to show that his doing so resulted in harassment of any kind, including sexual, and that there was, on the contrary, evidence of a mutual amicable relationship between the two men during 2003 and 2004. The panel did, however, add in its conclusions (see paragraph 51 of the report):

That, should [the applicant] continue to be employed by the United Nations, he should be cautioned as to the responsibilities of a senior manager in either having, or seeking to have, other than a working relationship with subordinates in his line management structure.

19. On 25 April 2006, the applicant wrote to the Secretary-General to request administrative review of "several decisions", namely the decisions to:

- a. terminate his contract;
- b. change his office in an undignified manner during the month of April;
- c. not to deal with the complaint for sexual harassment locally, not to inform him of it and not to assess its credibility before deciding on an investigation and informing New York.

20. By letter dated 27 April 2006, the Assistant Secretary-General for Human Resources transmitted a copy of the investigation panel's report, without its annexes, to the applicant. She informed the applicant that in the light of the panel's findings, which she accepted, she had decided not to

institute disciplinary proceedings. She did, however, end her letter as follows:

I have, however, taken note of the panel's finding that you demonstrated behaviour that was inappropriate and inconsistent with your responsibilities as a senior manager by seeking to have other than a working relationship with a subordinate in your line of authority. The poor judgement you have displayed by attempting to initiate a relationship with a subordinate staff member is particularly serious given your status as a senior manager, a position wherein you have both perceived and actual power to influence the careers and well-being of staff.

21. With effect from 1 May 2006, the applicant was placed on certified sick leave until 31 July 2010.

22. On 15 May 2006, the applicant sent the Secretary-General an "addendum" to his request for administrative review of 25 April 2006. In it, he contested the contents of the above paragraph of the letter from the Assistant Secretary-General for Human Resources and the paragraph in the investigation panel's report that gave rise to it and asked for both paragraphs to be removed from those documents.

23. On 24 May 2006, the applicant received the Secretary-General's response to his request for administrative review. This states in particular that the decision to abolish his post following the death of the senior Serbian official he was responsible for prosecuting was taken in accordance with the applicable rules and that the decision to caution him because of his behaviour towards a subordinate represented a proper exercise of the respondent's discretionary power.

24. By letter dated 12 June 2006, the Registrar, ICTY, advised the applicant of the decision to terminate his appointment effective 12 June 2006 or, as the applicant had submitted a medical certificate, effective 31 July 2006 in the event that his sick leave was certified by the Medical Service.

25. On 23 June 2006, the applicant filed an appeal with the New York JAB against two decisions: the decision made on 22 March 2006 and

confirmed on 12 June 2006 to terminate his appointment, and the decision contained in the investigation panel's report of 12 April 2007 and the letter of 27 April 2006 to caution him for his behaviour as a result of the complaint for sexual harassment made against him.

26. By letter dated 14 July 2006, the Chief Administrative Officer, ICTY, informed the applicant that the Medical Service had certified his sick leave until 31 July 2006 and that, pursuant to administrative instruction ST/AI/2005/3, the termination of his appointment would therefore be effective on that date.

27. Also on 14 July 2006, the applicant informed the Chief Administrative Officer by email that he would submit a further medical certificate by the end of July. A document from the ICTY Medical Service dated 14 July 2006 also noted that a further medical report would be provided by the end of July.

28. On 18 July 2006, the applicant petitioned JAB for suspension of action on the decision of 12 June 2006. On 27 July 2006, JAB submitted its report, recommending that the applicant's request be rejected. On 28 July 2006, the Under-Secretary-General for Management accepted that recommendation.

29. By email dated 27 July 2006, the applicant informed ICTY that his sick leave would be extended for two months until 26 September 2006 and that he was on the point of submitting a medical report from his doctor, who had just returned from holiday. On the same date, the ICTY Medical Service responded that it would need a detailed medical report to be able to certify extension of the sick leave. The applicant replied that he was doing all he could to obtain that report, but that it would take a further one to four weeks.

30. On 31 July 2006, the Organization terminated the applicant's appointment.

31. On 28 August 2006, the applicant submitted a medical report. The ICTY Medical Service informed him that it could only certify his sick leave until his last working day, 31 July 2006.

32. On 26 October 2007, JAB submitted its report to the Secretary-General. In it, it concluded on the one hand that the decision to terminate the applicant's appointment upon the death of the senior Serbian official he was responsible for prosecuting and the decision to caution him regarding his behaviour towards a subordinate were proper exercises of the respondent's discretion, but on the other that the decision not to extend the applicant's contract during his sick leave was a serious violation of his rights, for which JAB recommended the payment of 15 months' net base salary.

33. By letter dated 17 December 2007 and forwarded to the applicant on 21 January 2008, the Deputy Secretary-General advised the applicant of the Secretary-General's decision to accept the JAB recommendation in part only and to award him compensation in the amount of eight months' net base salary.

34. On 2 July 2008, after having requested and obtained from UNAT two extensions of the deadline, the applicant filed the present application.

35. On 16 December 2008, after having requested and obtained from UNAT two extensions of the deadline, the respondent submitted his answer to the application. On 17 December 2008, the answer was transmitted to the applicant, who submitted his observations on it on 19 January 2009.

36. The case, which UNAT was unable to hear before it was abolished on 31 December 2009, was transferred to UNDT on 1 January 2010.

37. On 19 April 2010, the Tribunal requested the respondent to provide copies of the annexes to the report submitted by the investigation panel in April 2006.

38. By email dated 3 May 2010, the respondent sent the Tribunal and counsel for the applicant copies of the seven annexes to the panel's report.

39. On 5 May 2010, the respondent informed the Tribunal that he had mistakenly sent a copy of the above email to the applicant's counsel. He requested the Tribunal to order counsel for the applicant to destroy the said annexes and to refrain from disclosing their contents to anybody, including the applicant.

40. By Order No. 55 (GVA/2010) dated 6 May 2010, the Tribunal, considering that the annexes contained confidential information of such nature that their distribution should be strictly restricted, ordered the applicant and his counsel not to disclose the contents of the annexes to anybody and not to use them before the Tribunal without its specific permission.

41. By letter dated 26 May 2010, the Tribunal informed the parties that an oral hearing would be held on 21 July 2010. By so doing, the Tribunal acceded to a request from the applicant, notwithstanding the respondent's view that the case could be resolved without a hearing as the file contained all the facts and the parties' pleas.

42. Further to *ex parte* requests by the applicant, the Tribunal agreed not to hold an oral hearing and, only in so far as that did not affect the integrity of the judgment, to conceal the applicant's identity.

43. By letter dated 25 June 2010, the parties were informed of the cancellation of the oral hearing.

Parties' contentions

44. The applicant's contentions are:

- a. The decision to terminate his appointment was made in violation of his rights because his contract provided for no limitation other than to service with ICTY. While it is true that he was recruited principally to prosecute a senior Serbian official, that was not the only case he handled;

- b. The decision to terminate his appointment was in reality influenced by improper considerations, namely his supervisor's animosity towards him, which arose out of disagreement over the prosecution of the above-mentioned senior Serbian official and was demonstrated by a series of incidents;
- c. His due process rights were, as JAB recognized, violated by the callous way in which his termination was implemented;
- d. The Administration failed in its obligation under administrative instruction ST/AI/2002/3 to appraise his performance during the five years prior to his termination;
- e. His due process rights were violated in the suspension-of-action proceedings, nullifying the proceedings and the decision that arose out of them;
- f. The Administration had an obligation to extend his contract for the duration of his sick leave. By failing to do so, it damaged his health and his rights. The Secretary-General's decision to reduce from 15 to eight months' salary the compensation recommended by JAB for the Administration's failure was unjustified. It was based on the false allegation that he resumed full-time professional activity from 1 August 2006;
- g. All the proceedings regarding the complaint for sexual harassment, from the transmission of the complaint to New York to the caution in the letter of 27 April 2006 from the Assistant Secretary-General for Human Resources, violated his rights because in particular: (i) he did not have access to all the evidence or to the information exchanged between the investigation panel and the Administration; (ii) he was not informed of his right under administrative instruction ST/AI /379 to be represented by counsel during the proceedings; (iii) the investigation panel interviewed him only a few days after he had undergone surgery. The panel should have

postponed the interview even though he had agreed to be questioned; (iv) the criteria for the investigation were altered without his knowledge; (v) the investigation panel did not take his statements properly into account; (vi) despite being aware that the investigation panel had found no evidence of harassment, his supervisor allowed a question about the complaint for sexual harassment made against him to be put during a press conference; (vii) the caution given to him by the Assistant Secretary-General for Human Resources was neither justified by the facts, since he had not sought to have anything other than a working relationship with the complainant, nor lawful, because there was no provision for it in the Staff Rules or the relevant administrative instructions.

45. The respondent's contentions are:
- a. The decision to abolish the applicant's post and to terminate his appointment was taken in accordance with the Staff Regulations and Rules and with the terms of his contract as a result of the death of the senior Serbian official he was responsible for prosecuting and the closure of the case. His D-1 post was created and funded specifically for the purpose of the case and became redundant upon the defendant's death. The decision to abolish the post was therefore taken in response to the necessities of service and constituted a proper exercise of the respondent's discretionary power;
 - b. The Assistant Secretary-General for Human Resources acted within the scope of her discretionary power by stating in her letter to the applicant that he had displayed poor judgment as a senior manager in his conduct towards a subordinate. Neither the investigation nor the letter in question violated the applicant's due process rights. Furthermore, no document concerning the matter has been placed in the applicant's file;

- c. The contested decisions were not vitiated by bias or any improper motive. It is established case law that it is for an applicant to prove his allegations of bias, which the applicant does not do;
- d. The Secretary-General agreed that the applicant's request for an additional two months' sick leave and the consequent extension of his contract should have been considered even after his separation and repatriation. He therefore awarded the applicant compensation of eight months' salary as being proportionate to the injury suffered and consistent with the practice of UNAT in similar circumstances;
- e. UNAT does not, other than in exceptional circumstances, award applicants costs even if it sustains their claims. The applicant fails to demonstrate that he unavoidably incurred costs for his defence;
- f. The Secretary-General's decisions regarding requests for suspension of action are not appealable;
- g. Decisions that have not been the subject of a request for administrative review cannot be contested before the Tribunal. That applies to the absence of appraisals of the applicant's performance.

Judgment

46. The application is irreceivable in so far as it seeks to contest the absence of appraisals of the applicant's performance because there was no relevant request to the Secretary-General for administrative review.

47. While the applicant contends that he was deprived of due process during the consideration by JAB of his request for suspension of action, the Tribunal considers that, given the limited effect of a stay of execution and the time constraints inherent in suspension-of-action proceedings, those proceedings were conducted consistently with the applicable rules and the applicant's rights.

48. Consequently, the Tribunal needs only examine the questions of the termination of the applicant's appointment, the proceedings for investigation of the complaint made against him and the criticisms contained in the letter of 27 April 2006 from the Assistant Secretary-General for Human Resources.

Termination of appointment

49. The applicant contends that the termination of his appointment was unfair because, on the one hand, the death of the senior Serbian official whom he was responsible for prosecuting was not a sufficient reason for ending his employment and, on the other, because the contested decision was influenced by improper considerations, namely his superior's animosity towards him..

50. The then staff regulation 9.1 provided that the Secretary-General could, without provision therefor being made in the staff member's letter of appointment, terminate the fixed-term appointment of a staff member prior to its expiration date if the necessities of service required abolition of the post.

51. It is clear from the documents submitted by the respondent that the D-1 level post against which the applicant was recruited was created specially for the prosecution of the above-mentioned senior Serbian official and was funded from the ICTY temporary-staff budget.

52. While the applicant claims that he did not handle only the above case, it is an established fact that that was his main task and the justification for the creation of the post he occupied. Consequently, the defendant having died, the decision to abolish the applicant's post was taken in response to the necessities of service and constituted a proper exercise of the respondent's discretionary power.

53. Since the above reason was in itself sufficient justification for the decision to terminate the applicant's employment, there is no need for the

Tribunal to investigate whether his supervisor's alleged animosity towards him was real and whether it influenced the decision.

54. The applicant further claims that his termination was unlawful because the Administration had an obligation to extend his contract for the duration of his sick leave. The Tribunal indeed notes, on the one hand, that administrative instruction ST/AI/2005/3 concerning sick leave creates such an obligation and, on the other, that prior to his termination on 31 July 2006 the applicant had provided the Administration with information that was sufficiently detailed to justify suspension of the contested decision. Furthermore, the Secretary-General himself acknowledged the unlawfulness of the decision to terminate the applicant's appointment effective 31 July 2006. The Tribunal must therefore declare that decision unlawful.

55. The applicant considers that the respondent did not adequately compensate him for having unlawfully terminated him while he was unwell and that the unlawful termination caused him injury.

56. As the applicant has not requested the rescission of his termination, but only the payment of compensation, the question the Tribunal must decide is that of the amount of compensation to be paid to him. The Secretary-General has already awarded him eight months' net base salary in this regard. For his part, the applicant seeks 24 months' net base salary.

57. As justification for the amount he awarded, the Secretary-General referred to the fact that the applicant reportedly resumed professional activity as from 1 August 2006. In this respect, the Tribunal considers that the fact that the applicant resumed work is not proof that he was fit to do so, but merely a consequence of his termination and of the need to have an alternative source of income, inter alia to meet his health costs.

58. As of 31 July 2006, the date of his termination, the applicant had a sick-leave credit of approximately 11 months at full salary. The Tribunal cannot know for how long his sick leave might ultimately have been extended and, therefore, whether he could have used the maximum sick-

leave credit that he had on 31 July 2006. It must be said, however, that this inability arises from the Administration's improper termination of the applicant's appointment on 31 July 2006.

59. The Tribunal therefore considers that the compensation for the material and moral injury suffered by the applicant as a result of his unlawful termination should be set at 11 months' net base salary, minus the eight months' net base salary already paid by the Secretary-General, i.e. three months' net base salary.

Proceedings for investigation of the complaint against the applicant

60. The applicant contends that the proceedings regarding the complaint for sexual harassment, from the transmission of the complaint to New York to the caution in the letter of 27 April 2006 from the Assistant Secretary-General for Human Resources, violated his rights.

61. The Tribunal first notes, with respect to the transmittal of the complaint to the Assistant Secretary-General for Human Resources in New York and the fact that the complaint gave rise to an investigation, that the applicant cannot criticise the Administration for having, in accordance with its obligations under administrative instruction ST/AI/379, undertaken an investigation once a complaint had been made.

62. Since the investigation did not find that there had been sexual harassment or result in any disciplinary measure, the applicant is not, at first sight, justified in complaining about it or its alleged flaws.

Reprimand

63. As the Assistant Secretary-General for Human Resources omitted to give a legal characterization of the criticisms that conclude her letter of 27 April 2006, a letter which, it may be noted, exonerated the applicant from the allegations of sexual harassment made against him, it is for the Tribunal to do so. Given the content, form and scope of the said criticisms, and even if the applicant disputes this view, the Tribunal considers that what the

applicant was given was a reprimand within the meaning of the then staff rule 110.3(b)(i).

64. Pursuant to the above-mentioned rule and to administrative instruction ST/AI/371, a reprimand is a non-disciplinary measure not requiring prior referral to a disciplinary body. It was within the Secretary-General's discretionary power to give the applicant a reprimand at the outcome of the investigation, providing in particular that the decision to do so was not tainted by procedural or factual errors.

65. Even though the investigation found him innocent of the accusations of harassment, the applicant is entitled to contest the way in which it was conducted, since the Administration made use of it to give him a reprimand.

66. While the applicant contends that he did not have access to all the evidence or to information exchanged between the investigation panel and the Administration, the Tribunal considers that he had available to him everything needed for his defence. Thus, he had access to the complaint filed against him, was able to give his version of the events to the investigation panel in the course of two interviews and in writing and was able to propose witnesses on his own behalf. In accordance with paragraph 6 of administrative instruction ST/AI/371 then in force, it was only if the Administration had decided to refer his case to a disciplinary body that the applicant would have had the right to receive all the written evidence of his alleged misconduct.

67. While it is true that, as the applicant contends, the investigation panel interviewed him only a few days after he had undergone surgery, the Tribunal cannot but reject his argument that the panel should have postponed the interview even though he himself had agreed to be questioned. It was for him to ask for the interview to be postponed if he did not feel fully capable of taking part in it.

68. While the applicant claims that the investigation panel misinterpreted what he said, an investigation panel has necessarily to exercise its judgment

and to assess the relative importance of the information it is given. In the case in point, the Tribunal has not found any manifest error of fact or judgment by the investigation panel and considers that the panel was thorough, meticulous and impartial in its determination and examination of the facts.

69. Lastly, the applicant contends that he was not informed of his entitlement under administrative instruction ST/AI/379 to be represented by counsel during the investigation. The respondent does not contest this procedural error. Unlike the then staff rule 110.4 and administrative instruction ST/AI/371, which entitled staff members to assistance by counsel only after an investigation and in the event of referral to a disciplinary body, administrative instruction ST/AI/379 provided for staff members to be assisted by counsel during an investigation and made it obligatory for the Administration to inform them of that right. Consequently, the investigation on which the reprimand was based was undertaken in breach of the applicant's defence rights.

70. The applicant further contends that the criticisms contained in the letter of 27 April 2006 from the Assistant Secretary-General for Human Resources are neither justified by the facts, since he had not sought to have anything other than a working relationship with the complainant, nor lawful, because there was no provision for them in the Staff Rules.

71. The applicant is in fact criticized in the letter of 27 April 2006 for two distinct kinds of behaviour. The first criticism, which purports to reflect one of the panel's findings, is that the applicant sought an other than working relationship with a subordinate. The second is that he attempted to initiate a relationship with a subordinate.

72. The first criticism reads as follows: "I have, however, taken note of the panel's finding that you demonstrated behaviour that was inappropriate and inconsistent with your responsibilities as a senior manager by seeking to have other than a working relationship with a subordinate in your line of authority."

73. The Tribunal considers that this criticism distorts the panel's finding and is, therefore, ill-founded. In fact, the panel found on the one hand that, given their supervisor-subordinate relationship, the applicant had been unwise to associate with the complainant outside work and on the other recommended that "should [the applicant] continue to be employed by the United Nations, he should be cautioned as to the responsibilities of a senior manager in either having, or seeking to have, other than a working relationship with subordinates in his line management structure".

74. The Tribunal further considers that even if this first criticism did not distort the panel's finding, it was not in itself sufficient to warrant giving the applicant a reprimand, especially as it is clear from the panel's report that at the time in question the applicant and the complainant had mutually amicable feelings and that it was the complainant himself who encouraged, if not sought, an other than purely professional relationship with the applicant.

75. The second criticism reads as follows: "The poor judgment you have displayed by attempting to initiate a relationship with a subordinate staff member is particularly serious given your status as a senior manager..."

76. The Tribunal understands from this wording that the Administration's intention was to criticise the applicant for having attempted to initiate a sexual or intimate relationship with the complainant. Such a criticism is, however, baseless because there is no fact or conclusion in the panel's report to support it; on the contrary, the report finds that the applicant did not make any sexual advances towards the complainant. All that the applicant acknowledged was that he told the complainant he found him attractive, a circumstance that cannot alone justify the reprimand.

77. It follows that the reprimand issued to the applicant was unlawful as being tainted by procedural and factual errors and that it is therefore appropriate to rescind it and to order that all traces of it be removed from all the files in the Administration's possession.

78. The Tribunal considers that compensation must be provided for the moral injury resulting from the unlawfulness of the reprimand and sets that compensation at three months' net base salary.

Press conference

79. The applicant also contends that, although she knew that the investigation panel had found no evidence of harassment, his supervisor allowed a question about the complaint for sexual harassment made against him to be put during a press conference. He does not, however, provide enough evidence to substantiate that allegation. The Tribunal can therefore take no action on it.

Payment of legal costs

80. Lastly, the applicant claims compensation for his legal costs.

81. Article 10, paragraph 6, of its statute empowers the Tribunal to award costs against a party who has manifestly abused proceedings before it. In the present instance, the Tribunal finds no abuse of the proceedings by the respondent and there is therefore no need to award costs against him under the aforesaid article 10, paragraph 6.

82. However, as the applicant filed his application with the former United Nations Administrative Tribunal (UNAT), it must be determined whether, under the old internal justice system, he was entitled to compensation for his legal costs.

83. The practice of the former UNAT was to award applicants costs only in exceptional circumstances. In its Judgement No. 237, *Powell* (1979), UNAT stated:

As regards costs, the Tribunal has declared in its statement of policy contained in document A/CN.5/R.2 dated 18 December 1950 that, in view of the simplicity of its proceedings, the Tribunal will not, as a general rule, grant costs to Applicants whose claim to have been sustained by the Tribunal. Nor does the Tribunal order costs against the Applicant in a case where he fails. In exceptional cases, the Tribunal may, however, grant costs if they are demonstrated to have

been unavoidable, if they are reasonable in amount, and if they exceed the normal expenses of litigation before the Tribunal.

84. The Tribunal sees no reason in the present case to depart from the general practice of the former UNAT and refuses to grant the applicant repayment of his legal costs.

Decision

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

- 1) The respondent is ordered to pay the applicant three months' net base salary in addition to the eight months' net base salary already paid by the Secretary-General for the injury suffered as a result of his unlawful termination;
- 2) The reprimand issued by the Assistant Secretary-General for Human Resources in her letter of 27 April 2006 is rescinded. It shall, if necessary, be expunged from all the files in the Administration's possession;
- 3) The respondent is further ordered to pay the applicant three months' net base salary for the injury resulting from the unlawful reprimand;
- 4) The above amounts of compensation refer to the applicant's net base salary as of the date of his termination and shall bear interest at the rate of eight per cent per annum from 90 days after the date of the present judgement until they are paid;
- 5) All the other requests are rejected.

(signed)

Judge Jean-François Cousin

Dated this 27th day of July 2010

Translated from French

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Entered in the Register on this 27th day of July 2010

(signed)

Víctor Rodríguez, Registrar, UNDT, Geneva