



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2010/042
(UNAT 1661)
Judgment No.: UNDT/2010/169
Date: 24 September 2010
English
Original: French

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

YAPA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Antonio Lombardi

Counsel for Respondent:
Sergei Raskalei, UNOG

Introduction

1. The Applicant contests the decision of 10 April 2008 whereby the Secretary-General imposed a written censure on him pursuant to rule 110.3(a)(i) of the Staff Rules in force at the time and demoted him by one grade under rule 110.3(1)(vi) of the said Staff Rules with no possibility of promotion for two years.

2. The Applicant requests that the disciplinary sanctions be rescinded; that any and all documentation concerning this event be removed from his personnel file; that he be promoted to his previous grade with full retroactive effect; and that he be awarded moral damages, attorney's fees and costs for the injury he has incurred owing to the said sanctions.

3. The Applicant further requests the Tribunal to hear certain witnesses and to order the Administration to produce all relevant documents, recordings and testimony.

4. By virtue of the transitional measures set out in United Nations General Assembly resolution 63/253, the application before the former UN Administrative Tribunal was referred to the present Tribunal on 1 January 2010.

Facts

5. The Applicant entered service at the United Nations in Geneva ("UNOG") as a driver at the G-2 level on 26 August 1991, on the basis of a short-term appointment which was renewed several times. In May 1992, he was granted a short-term appointment at the G-3 level in the Department of Humanitarian Affairs / Special Unit for Iraq.

6. In July 1992, he became a Security Officer at the G-2 level. He subsequently served in Iraq between November 1992 and 1 April 1993, at which time he was given a new short-term appointment as a Security Officer at UNOG.

7. On 1 July 1997, the Applicant was promoted to the G-3 level and was given a fixed-term appointment, which has been renewed periodically since then.

8. As he had applied for two posts advertised at the G-4 level, on 7 December 2006 the Applicant, along with 16 other internal and external candidates, took a French written examination for the recruitment/promotion of security officers.

9. At the examination, after the candidates had been asked to put away all materials, the staff member acting as exam invigilator noticed that the candidate had kept a sheet of paper on his desk with samples of briefings in French. After having the Applicant sign the sheet in question, the invigilator took it and invited him to continue the examination process.

10. On 14 December 2006, the exam invigilator informed the Chief, Human Resources Management Service (“HRMS”), UNOG, of the incident that had occurred on 7 December 2006.

11. On 14 March 2007, the Chief, HRMS, UNOG, latter informed the Assistant Secretary-General, Office for Human Resources Management (“OHRM”), New York, of the alleged misconduct and proposed that the case be submitted to the Joint Disciplinary Committee (“JDC”) for advice.

12. On 30 March 2007, the Administrative Law Unit (“ALU”), New York, requested a Legal Officer from HRMS, UNOG, to obtain the Applicant’s version of the facts held against him.

13. On 3 April 2007, the above-mentioned Legal Officer tried to contact the Applicant by e-mail. After several exchanges of e-mails, the Applicant refused, on 16 April 2007, to present his version of the facts. In the course of these exchanges, the Applicant was informed that he had been contacted on behalf of HRMS, UNOG, due to the fact that he had been caught with unauthorized documents at his language examination in December 2006. He was further reminded that he had a duty to cooperate and could not refuse to answer the questions put by the Administration.

14. On 20 April 2007, the Director, Division for Organization Development (“DOD”), OHRM, at Headquarters, informed the Applicant of the allegations against him, namely, that he had tried to cheat on an examination and had refused to cooperate with the investigation, and asked him to submit his comments within a two-week time limit.

15. On 25 May 2007, the Applicant asked the Chief, Training Unit, Security and Safety Section, UNOG, for certain documents. The latter replied that he did not have them and advised the Applicant to refer to the Chief, Security and Safety Section.

16. On 4 June 2007, the Applicant’s Counsel asked the Chief, Security and Safety Section, to supply all of the documents requested by the Applicant.

17. On 11 June 2007, the same Counsel submitted a preliminary comment on the allegations.

18. On 10 August 2007, the Assistant Secretary-General for Human Resources Management referred the Applicant’s case to the Presiding Officer of the Geneva Joint Disciplinary Committee (“JDC”) and asked him to establish whether the facts held against him, namely, attempting to cheat on an examination and refusing to cooperate with an investigation, had been established, if misconduct had occurred and, if so, to indicate what disciplinary measures should be imposed.

19. On 10 September 2007, the Applicant’s Counsel asked the Under-Secretary-General for Management not to empanel a JDC.

20. On 20 September 2007, the Secretary of the JDC informed the Applicant and his Counsel that the case had been submitted to the JDC and sent them the case file.

21. On 17 October 2007, the Secretary of the JDC informed the Applicant of the composition of the JDC panel constituted to study his case.

22. On 21 October 2007, the Applicant raised objections to the composition of the JDC panel, which were rejected by the Presiding Officer of the JDC on 23 October 2007.

23. On 13 November 2007, the Applicant's Counsel submitted his reply to the allegations of misconduct.

24. On 28 February 2008, the JDC submitted its report to the Secretary-General, with a recommendation that no disciplinary measure be imposed but merely a written reprimand according to staff rule 110.3(b)(i).

25. On 10 April 2008, the Secretary-General rejected the JDC recommendation and imposed the contested disciplinary measures, namely, written censure and demotion by one grade with no possibility of promotion for two years.

26. By application dated 12 December 2008, the Applicant appealed the above-mentioned decision to the former UN Administrative Tribunal. The Respondent subsequently submitted a reply, followed by the Applicant's comments on such reply.

27. The case was transferred to the present Tribunal on 1 January 2010, pursuant to United Nations General Assembly resolution 63/253.

28. The Applicant's new Counsel submitted a brief spelling out his position on 27 August 2010.

29. On 1 September 2010, at the Tribunal's request, the Respondent conveyed to the Tribunal the paper which had been confiscated from the latter at the examination of 7 December 2006, which was in turn transmitted to the Applicant.

30. On 2 September 2010, a hearing was held at which the Applicant, his Counsel and the Respondent's Counsel appeared in person.

31. By letter of 6 September 2010, the Judge hearing the case informed the parties that he intended to raise on his own initiative the illegality of the

sanctions imposed, namely, a two-year ban on promotion, for want of a legal provision foreseeing such a disciplinary measure at the time of the misconduct.

32. By brief received at the registry on 12 September 2010, the Counsel for the Applicant explained that the latter had withdrawn his allegations concerning the falsification of the JDC report.

33. In response to the Tribunal's letter of 6 September 2010, the Respondent forwarded its comments on 13 September 2010, submitting that the disciplinary measure which consisted of depriving the Applicant of any possibility of promotion for two years was not illegal.

Parties' contentions

34. The Applicant's contentions are:

a. He did not cheat and had no intention of cheating on the exam; the subject matter of the notes found on his desk did not correspond with that of the exam; neither the Organization nor the exam invigilator explained how he could have cheated with these notes. He kept his notes to study up until the last minute; moreover, the notes were taken away from him before the exam started;

b. The exam he sat was not foreseen in the post vacancy announcements. It was organized by the Security and Safety Section to favour certain candidates;

c. The Applicant was not informed of the charges against him by the person conducting the preliminary investigation;

d. He did not refuse to cooperate with the Administration but merely tried to preserve his rights; the exchange of e-mails shows that on 13 April 2007, the Applicant attempted to clarify the role of the HRMS Legal Officer who had contacted him in that connection. The latter did not explain that she was involved in a disciplinary action and decided without

further warning that he refused to answer and that a disciplinary procedure would have to be opened, whereas he was entitled to know whether she was acting as an independent investigator or a representative of the Administrative;

e. Pursuant to administrative instruction ST/AI/371, the staff member should have already been informed on 14 March 2007 of the facts held against him. By not supplying the requested information, he was merely preserving his rights in the proceedings that had been opened against him;

f. His rights to defend himself were not recognized. He was not informed that he was liable to disciplinary sanctions for failure to cooperate;

g. He objected to the presence of certain persons among the JDC members appointed to study his case. No action was taken on his request to recuse one of the members on the grounds that the member in question had publicly expressed his opposition to the right of parties to request hearings before the JDC. Some members of the panel were exceptionally hostile when the Applicant appeared with his Counsel. When he was heard by the JDC, the Applicant was not able to question the exam invigilator on the facts held against him;

h. The exam invigilator was a member of the Joint Appeals Board (“JAB”) pool of panel members and thus a colleague of one of the JDC members. This fact was not disclosed to the Applicant, whereas this situation constituted a conflict of interest;

i. Paragraph 69 of the JDC report was added by the Secretariat once the panel members had already adopted their report. This argument was withdrawn by means of a brief submitted on 12 September 2010;

j. The sanctions imposed constitute an act of retaliation for having cooperated with the Joint Inspection Unit in an official investigation;

k. The sanctions handed down are disproportionate in relation to the alleged misconduct and no consideration was given to the Applicant's long and impeccable record of service for the Organization.

35. The respondent's contentions are:

a. The Secretary-General took his decision pursuant to his discretionary authority in disciplinary matters, as recognized by the case law of the former UN Administrative Tribunal;

b. The Applicant failed to meet the standards of integrity required of staff members, and such failure amounted to misconduct;

c. The Applicant made contradictory statements as to the reasons why he kept a paper on his exam desk. The attempt to cheat on the exam has been established;

d. The proper disciplinary procedure was followed, and if the Applicant complains of having been poorly treated during his years of service, this circumstance, assuming it is correct, is unrelated to his alleged misconduct. He has not provided any proof that the last paragraph of the JDC report was added after the members of the panel had approved the said report;

e. The disciplinary sanctions imposed are proportionate to the misconduct that occurred;

f. The ban on promotion for two years starting from the date of the decision sanctioning the staff member is legal. There is an established practice of combining demotion with a period during which the person concerned is prevented from being promoted again, a practice to which the former UN Administrative Tribunal acquiesced through its case law and which has been codified by rule 10.2 of the Staff Rules that have been in force since 2009. This way of proceeding is in fact more favourable to the Applicant, who would otherwise remain indefinitely at the level resulting from his demotion.

Judgment

36. The Applicant contests the decision dated 10 April 2008 whereby the Secretary-General imposed a written censure on him and demoted him by one grade with no possibility of promotion for two years.

37. Whereas the Applicant asked that certain witnesses be heard, the Tribunal considers that the parties were able to give full explanations in writing and that it was not necessary to hear witnesses.

38. When the Tribunal is seized of an application contesting the legality of a sanction imposed on a staff member, it must examine, first, whether there are any procedural irregularities; second, if the alleged facts have been established; thirdly, if the facts constitute misconduct; and finally, if the sanction imposed is proportionate to the misconduct, as it results from the judgments of the United Nations Appeals Tribunal 2010-UNAT-018, *Mahdi*, 2010-UNAT-022, *Abu Hamda* and 2010-UNAT-028, *Maslamani*.

Regularity of the procedure

39. In maintaining that the sanctions taken by the Secretary-General were illegal, the Applicant submits, first of all, that the disciplinary procedure followed was irregular.

40. Regulation 10.2 of the Staff Regulations in force at the time provided that:

The Secretary-General may impose disciplinary measures on staff members whose conduct is unsatisfactory.

41. Rule 101.1 of the Staff Rules in force at the time provided that:

Failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the 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 10.2, leading to the institution of disciplinary proceedings and the imposition of disciplinary measures for misconduct.

42. Administrative instruction ST/AI/371 of 2 August 1991, of which there is no official translation in French, establishes the procedure to be followed pursuant to the above-mentioned provisions:

2. Where there is reason to believe that a staff member has engaged in unsatisfactory conduct for which a disciplinary measure may be imposed, the head of office or responsible officer shall undertake a preliminary investigation. Misconduct is defined in staff rule 110.1 as “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 administrative issuances, or to observe the standards of conduct expected of an international civil servant.” ...

3. If the preliminary investigation appears to indicate that the report of misconduct is well founded, the head of office or responsible officer should immediately report the matter to the Assistant Secretary-General, Office of Human Resources Management, giving a full account of the facts that are known and attaching documentary evidence...

...

5. On the basis of the evidence presented, the Assistant Secretary-General, on behalf of the Secretary-General, shall decide whether the matter should be pursued...

6. If the case is to be pursued, the appropriate official in the administration at headquarters duty stations, and the head of office or mission at duty stations away from headquarters, shall:

(a) Inform the staff member in writing of the allegations and his or her right to respond;

(b) Provide him or her with a copy of the documentary evidence of the alleged misconduct;

(c) Notify the staff member of his or her right to the advice of another staff member or retired staff member to assist in his or her responses; and offer information on how to obtain such assistance;

...

7. The staff member should be given a specified time to answer the allegations and produce countervailing evidence, if any. ... If no response is submitted within the time-limit, the matter shall nevertheless proceed.

8. The entire dossier is then submitted to the Assistant Secretary-General, Office of Human Resources Management...

9. On the basis of the entire dossier, the Assistant Secretary-General, Office of Human Resources Management, shall proceed as follows:

(a) Decide that the case should be closed, and the staff member should be immediately notified that the charges have been dropped and that no further action will be taken. This is without prejudice, where appropriate, to the measures indicated in staff rule 110.3(b)(i) and (ii); or

(b) Should the facts appear to indicate that misconduct has occurred, refer the matter to a joint disciplinary committee for advice; or

(c) Should the evidence clearly indicate that misconduct has occurred, and that the seriousness of the misconduct warrants immediate separation from service, recommend to the Secretary-General that the staff member be summarily dismissed. The decision will be taken by or on behalf of the Secretary-General.”

43. First of all, the Applicant claims that he was not informed of the charges against him by the person conducting the preliminary investigation. However, it is clear from the above-cited provisions, in particular paragraph 6, that it is only when the Assistant Secretary-General, Office of Human Resources Management, has decided that disciplinary proceedings should be instituted that the Administration must inform the staff member concerned in writing. Accordingly, the Applicant is not entitled to hold that the staff member in charge of conducting the preliminary investigation had to inform him of the subject matter of her investigation. Moreover, it can be seen from the e-mails that the Legal Officer, HRMS, UNOG, sent the Applicant on 12 and 13 April 2007 that, contrary to what the Applicant claims, he was informed on those date of the facts held against him.

44. The Applicant further submits that he should have been informed by the Administration that his refusal to cooperate with the preliminary investigation could constitute misconduct. There is cause for the Tribunal to emphasize that staff members of the Organization must respect the

obligations stemming from their status, without the Administration being bound to remind them thereof.

45. Next, the Applicant contests the regularity of the procedure followed by the JDC. He claims that the Presiding Officer of the JDC, Geneva, wrongly failed to accept his request to recuse a member of the panel constituted to examine his case. However, the statements of a general nature that the said member reportedly made as to the value for the JDC of oral hearings and the examination of witnesses are not such that a bias against the Applicant may be established.

46. Whereas the Applicant submitted before the Judge that one of the witnesses heard by the JDC, namely the exam invigilator, was a colleague of certain members of the JDC in her capacity as a JAB member, this fact, assuming that it is correct, does not remove the value of her testimony, given that she was the main witness of the facts of which the Applicant stood accused. Finally, although it was argued that the JDC prevented the Applicant's Counsel from questioning that same witness, this allegation is contradicted by the evidence on file, which on the contrary shows that the witness was heard by the JDC even though, at a given point, the Chairperson of the panel, who was empowered to do so, put an end to the questioning, deeming that the panel had been sufficiently informed.

47. It was also argued in the application that paragraph 69 of the copy of the JDC report sent to the Secretary-General had been added to the initial version signed by all panel members, probably by one of its members with the help of the JDC Secretary. There is cause for the Tribunal to note first of all the defamatory nature of these allegations, whereas the Applicant did not provide any element corroborating these serious accusations, either in writing or at the hearing. On the contrary, the reading by the Judge of the original report signed by the three members of the panel shows the malicious nature of the Applicant's allegations, which the Tribunal can only condemn forcefully. There is cause for the Tribunal to remind the Applicant and the Counsel who initiated the proceedings in the strongest possible terms that the right of a staff member to submit an application and develop his or her

arguments does not give him or her the right to make false accusations against staff members who are not a party to the dispute and who are merely helping to ensure the smooth functioning of the internal judicial system of the United Nations.

48. It therefore emerges from the foregoing that the Applicant failed to establish the irregularity of the disciplinary procedure followed in imposing the contested sanctions.

Existence of the facts held against the applicant

49. It is now necessary to examine whether the facts held against the Applicant have been established. The latter submits that he neither cheated nor even attempted to cheat at the French exam he sat on 7 December 2006. However, it can be seen from the facts, as they emerge from the file and particularly from the report drawn up by the exam invigilator further to her confiscation of the contentious document, that the Applicant, even though he was warned, both orally and in writing, to put away all personal documents he had with him, kept on his desk a paper containing notes that could have helped him answer the questions put. Whereas at the hearing the Applicant submitted that he intended to use the back of his study materials as scrap/note paper and that in any case those notes could not be of any use to him, it is clear for the Tribunal that the content of the document could have helped the Applicant answer questions likely to be asked at the exam and that the Applicant's intention was to use it. Thus, the attempt to cheat on an exam has been established.

50. Whereas the Applicant submits that the exam was not foreseen by any body of rules and was organized at the sole initiative of the Security and Safety Section, this circumstance, assuming that it is exact, has no bearing on the reality of the charges, given that the issue at stake is the Applicant's intention, not the validity of the exam taken.

51. The Secretary-General also justified the sanctions by the fact that the Applicant had displayed a lack of cooperation in the investigation conducted following the report submitted by the exam invigilator.

52. Rule 104.4(3) of the Staff Rules in force at the time provided that:

A staff member may at any time be required by the Secretary-General to supply information concerning facts ... relevant to his or her integrity, conduct and service as a staff member.

53. To support his claim that his intention was not to refuse to cooperate but rather to preserve his rights in the disciplinary proceedings opened against him, the Applicant maintains that the said disciplinary proceedings had been opened already on 14 March 2007, when the Chief, HRMS, UNOG, informed the Assistant Secretary-General for Human Resources Management of the presumed misconduct and proposed that the case be submitted to the JDC. However, it flows from the foregoing provisions of administrative instruction ST/AI/371 that disciplinary proceedings only start when, in accordance with paragraph 6 of the said instruction, the Administration informs the staff member in writing of the allegations against him and of his right of reply.

54. The investigation which preceded the opening of disciplinary proceedings was not conducted in adversarial fashion and the foregoing administrative instruction does not in any way provide that the staff member must at this stage be informed of the investigations concerning him. It is indeed indispensable, in certain cases, that the Administration may investigate the doings of a staff member without giving him or her prior notice. On the other hand, the staff member must, in accordance with the foregoing rule 104.4(e), cooperate with the Administration in this preliminary investigation if so requested. Accordingly, the Applicant cannot argue that at the stage of the preliminary investigation, he had a right to refuse to reply to the requests of the staff member in charge of such investigation.

55. It is therefore for the Tribunal to determine the period during which the Applicant is bound to answer the Administration's requests for information. It is not contested that after ALU, on 30 March 2007, asked a Legal Officer, HRMS, UNOG, to get the Applicant's version of the facts, the first request which the said Legal Officer made by telephone to the Applicant was done on 5 April 2007. Subsequently, on 12 April 2007, the same staff member asked the Applicant to meet with her or supply his explanations in writing. After other exchanges of e-mails, the Applicant refused on 16 April 2007 to present his version of the facts. On 20 April 2007, the Director, Division for Organizational Development, OHRM, at Headquarters, informed the Applicant of the allegations against him and asked the latter to submit his comments within a two-week time limit.

56. Thus, from 5 April 2007 to 20 April 2007, the date on which disciplinary proceedings were opened, the Applicant refused to provide explanations on the facts which form the subject matter of the report by the exam invigilator. The refusal to cooperate with the Administration has therefore been established, as well as the body of facts which justified the sanctions imposed.

Existence of misconduct

57. It is now for the Tribunal to decide whether these facts constitute misconduct.

58. Under staff regulation 1.2(b):

Staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status...

59. In addition, pursuant to staff regulation 1.3:

Staff members are accountable to the Secretary-General for the proper discharge of their functions. Staff members are required to uphold the highest standards of efficiency, competence and integrity in the discharge of their functions...

60. Given that, by virtue of the foregoing provisions, staff members are expected to maintain the highest standards of integrity, an attempt by a security officer to cheat on an exam can only be deemed misconduct, even if the results of the exam were not of great importance for the staff member.

61. Similarly, given that staff rule 104.4, entitled “Notification by staff members and obligation to supply information”, provides in subparagraph (e) that the Secretary-General may require a staff member at any time to supply information concerning facts relevant to his or her integrity, conduct and service as a staff member, the fact that a staff member, notably one occupying the functions of security officer, impedes an investigation can only be deemed misconduct.

Type of sanctions which may be legally imposed

62. Pursuant to staff rule 110.3(a) which applied at the time of the facts held against the Applicant, in case of misconduct, disciplinary measures may take one or more of the following forms:

- (i) Written censure by the Secretary-General;
- (ii) Loss of one or more steps in grade;
- (iii) Deferment, for a specified period, of eligibility for within-grade increment;
- (iv) Suspension without pay;
- (v) Fine;
- (vi) Demotion;
- (vii) Separation from service, with or without notice or compensation in lieu thereof, notwithstanding rule 109.3;
- (viii) Summary dismissal.

63. The Tribunal must note first of all that one of the sanctions imposed on the Applicant, namely demotion with no possibility of a new promotion for two years, is not one of the sanctions which are listed above and which may therefore be legally imposed on staff members. Indeed, whereas demotion is foreseen, there is no text providing that such demotion may be

combined with a ban on promotion for a specific duration and, pursuant to the general principle that there can be no punishment without a written rule foreseeing it, the accessory punishment of a two-year ban on promotion can only be declared illegal, and hence rescinded.

64. Whereas the Administration, in response to the letter sent by the Judge informing the parties that he intended to raise this illegality on his own initiative, submits that this measure in fact benefits the staff member punished, who could otherwise no longer receive any promotions, this line of argument can only be rejected given that as far as promotion is concerned, the Secretary-General has discretionary power and that it is for him, after having imposed the disciplinary measure of demotion, to examine, in the light of the rules applicable to the staff member in question, if and when the staff member concerned may expect a new promotion. Moreover, the fact that the Administration imposed this type of disciplinary measure on several occasions without it being recognized as illegal by the former UN Administrative Tribunal is not a valid legal argument for the present Tribunal.

Proportionality of the disciplinary measures in relation to the misconduct

65. Finally, there is cause for the Tribunal to examine whether the disciplinary measures imposed, namely written censure and demotion, are proportionate to the misconduct.

66. The Tribunal considers that the fact that a staff member attempts to cheat on an exam, even if the latter is not important for his or her career, is a serious act which points to a certain lack of integrity, especially for a security officer. Even though it can be seen from the previous career of the staff member concerned that his performance was always appreciated by his supervisors, such misconduct can only be severely punished. In addition, the Applicant's behaviour subsequent to the report setting out his attempt to cheat also points to a lack of judgment in refusing to cooperate entirely with the Administration. The Applicant, contrary to what he maintains, in view of the functions exercised, could not be unaware of rule 104.4(e) whereby a

staff member is bound to supply information concerning facts required by the Administration for any investigation pertaining to his or her integrity and conduct.

67. As a result, the written censure and demotion imposed on the Applicant by the Secretary-General are not disproportionate in relation to the misconduct and there are grounds to reject the Applicant's request that they be rescinded.

Damage suffered by the Applicant linked to the illegality of the ban on promotion for two years

68. The Tribunal considers that the Applicant may not expect to be compensated for any moral damage due to the illegality of the two-year ban on promotion and that the moral damage suffered is due to the disciplinary measures of censure and demotion, which were not judged illegal by the Tribunal.

69. With regard to the material damage suffered due to the fact that the Administration unlawfully deprived the Applicant from any chance for promotion over a two-year period, the Tribunal considers that given the discretionary power of the Secretary-General to grant promotion or not and given the disciplinary measures imposed on the Applicant, the latter's chances of obtaining a promotion in less than two years starting from the date of his demotion were very slim but not nonexistent, in the light of his performance appraisals prior to the disciplinary measures imposed.

70. Under the present circumstances, there are grounds to order the Respondent to pay the Applicant the sum of 1,000 Swiss francs (CHF).

Decision

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

- (1) The two-year ban on promotion which accompanied the Applicant's demotion is hereby rescinded;

- (2) The Administration is ordered to pay the Applicant compensation in the amount of CHF 1,000;
- (3) Interest shall be charged on the above-mentioned compensation payable at five per cent per annum as from 60 days from the date on which the present judgment becomes enforceable and until payment is completed;
- (4) All other requests of the Applicant are hereby rejected.

(signed)

Judge Jean-François Cousin

Dated this 24th day of September 2010

Entered in the Register on this 24th day of September 2010

(signed)

Victor Rodríguez, Registrar, UNDT, Geneva