



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2009/67

Judgment No.: UNDT/2012/049

Date: 26 April 2012

Original: English

**Before:** Judge Boolell (Presiding)  
Judge Izuako  
Judge Goolam Meeran

**Registry** Nairobi

**Registrar:** Jean-Pelé Fomété

KASMANI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**  
Katya Melliush, OSLA

**Counsel for Respondent:**  
Stephen Margetts, ALS  
Joerg Weich, UNON

## **Introduction**

1. The Applicant was a Procurement Assistant at the G-4 level on a 3-month fixed-term appointment against a General Temporary Assistance (GTA) post. This case concerns the decision to not renew his temporary fixed-term appointment, which was based, the Applicant contends, on extraneous factors.

2. The Tribunal finds that the issues in this case are as follows:

- I. Was the termination of the Applicant's contract motivated by extraneous factors?
- II. Was the recruitment of the Applicant flawed?
- III. Were the Applicant and/or his witnesses subject to abuse of authority and/or retaliation?

## **Procedural History**

3. The Applicant joined the United Nations on 4 June 2009, as a G-4 Procurement Assistant within the Procurement, Travel and Shipping Section (PTSS) of the Division of Administrative Services (DAS) at the United Nations Office in Nairobi (UNON), on a three (3) month fixed-term appointment against a General Temporary Assistance (GTA) post. He had previously, between August 2007 and April 2008, served as an intern with the United Nations Human Settlements Programme (UN-HABITAT) and PTSS.

4. The Applicant's recruitment was initiated by Mr. Felix Nartey, who was then officer-in-charge of PTSS. Mr Nartey, in his capacity as the Applicant's immediate supervisor, subsequently recommended that the Applicant's appointment be extended for a further three (3) months.

5. On 25 August 2009, Mr. Nartey, wrote to the Chief of PTSS/DAS, Ms. Diana Mills-Aryee (Ms. Mills/ Ms. Mills-Aryee), to follow-up on his recommendation for the renewal of the Applicant's contract which was to expire on 3 September 2009. She did not respond.

6. On the same day, the Applicant received an email from the Human Resources Management Services (HRMS) of UNON, requesting that he complete the check-out formalities for the purposes of separation from service.

7. On 28 August 2009, the Applicant requested management evaluation of the decision to separate him, specifically of "the decision dated 25 August 2009 not to extend his fixed-term appointment beyond 3 September 2009."

8. Also on 28 August 2009, the Applicant applied to the United Nations Dispute Tribunal (UNDT/Tribunal) in Nairobi to suspend the implementation of the decision not to renew his fixed-term appointment beyond 3 September 2009.

9. On 2 September 2009, UNDT Nairobi heard the matter. The Applicant and a witness called on his behalf (Mr Felix Nartey) were heard and cross-examined by the Respondent.

10. On 3 September 2009, the Tribunal granted the application for a suspension of action. The Tribunal held that the Applicant had made out a case of *prima facie* unlawfulness, urgency and irreparable damage as required by Article 13 of the UNDT Rules of Procedure. In its reasoned decision of 11 September 2009, the Tribunal held that the "recommendation for renewal must now proceed as if approved by the Chief of PTSS, pending management evaluation."

11. On 9 October 2009, the Applicant received a response to his request for management evaluation from the Under-Secretary-General for Management (MEU decision). Finding partially in favour of the Applicant, the MEU review stated that the Applicant had not presented evidence of a conflict between Mr. Nartey and Ms. Mills-Aryee amounting to improper motive behind the decision, but that an

expectancy of renewal had been created which the Applicant had relied upon in good faith. However, the MEU did not consider specific performance to be appropriate and instead awarded the Applicant compensation in the form of three (3) months' net base salary.

12. Following the MEU decision, on 15 October 2009, the Applicant was notified by UNON that he was to be separated from service on 16 October 2009. It must be noted that 16 October 2009 was a Friday, so that close of business in UNON was at 2 pm.

13. On the morning of 16 October 2009, the UNDT Registry received the Applicant's second application for suspension of action in respect of his separation which was to be effected that afternoon. This was also copied to the Respondent. Separately, the Applicant filed *ex parte* submissions of evidence in support of his application. The Tribunal granted the Applicant's motion and ordered an interim suspension of the decision of 15 October 2009 "until further notice."

14. The exigencies of the circumstances at the time made it necessary for the Tribunal to rule on the Applicant's motion before hearing the Respondent. It was a matter of hours between the receipt and registration of the application by the Tribunal and the end of the working day in Nairobi at which time the Applicant was to be separated. The urgency was compounded by the fact that at the time, the Respondent was still being represented by counsel from the Administrative Law Unit (as it then was) in New York. On 21 October 2009, the Respondent filed its Reply to the Application for Suspension of Action.

15. On 28 October 2009, the Applicant filed his substantive application challenging the MEU decision and the impugned decision of 25 August 2009 not to renew his contract as well as, insofar as it is interconnected, the Administration's decision of 15 October 2009 to separate the Applicant from service following receipt of the impugned MEU report.

16. On 30 October 2009, the Applicant filed an Application for Interpretation, asking the Tribunal what it meant by “until further notice” given that the Applicant’s contract was due to expire on 3 November 2009. The Respondent’s Reply to this Application for Interpretation was filed on 2 November 2009.

17. On 3 November 2009, the Tribunal rendered its reasoned decision on the Application for Suspension of Action filed on 15 October 2009 and Application for Interpretation filed on 30 October 2009 (2009/63). The Tribunal granted the Applicant’s Motion for Suspension of Action and ordered the suspension of the Respondent’s decision not to renew the Applicant’s appointment until the substantive application is heard and determined.

### **THREE JUDGE PANEL CONSTITUTED**

18. Also on 3 November 2009, the President of the Tribunal, mindful of the importance and particular complexity of the case, issued an order constituting a panel of three judges in accordance with Article 10(9) of the Statute and Article 5(2) of the Rules of Procedure of the UNDT to hear the substantive Application.

19. The Tribunal received an *ex parte* application by the Applicant for a number of his witnesses to be heard *ex parte* and *in camera* on the ground that they feared retaliation. Judges Nkemdilim Izuako and Goolam Meeran were appointed to form the Bench, sitting with Judge Vinod Boolell, presiding.

20. The substantive Application was heard in February 2010; five (5) witnesses, including the Applicant, testifying for both Parties, were heard over the course of three hearing days, following which the matter was adjourned for judgment.

### ***Preliminary Motions***

#### ***Ex Parte Application***

21. On 28 October 2009, the Applicant filed his substantive application, which contained a number of *ex parte* annexes, requesting that the witnesses named therein

be heard by the Tribunal *in camera*. Counsel for the Applicant submitted that these witnesses were labouring under a genuine apprehension that retaliatory measures may be taken against them if they testified.

22. Counsel moved the Court “to admit the [...] evidence on an *ex parte* basis and, if an oral hearing of the Application on the Merits is listed, to admit the oral evidence of [the witnesses] to be heard *ex parte* and *in camera*.” Counsel submitted that the evidence of these witnesses “could be subject to challenge by the Tribunal itself” during the course of the oral hearing.

23. On 16 February 2010, the Tribunal issued its Decision refusing the Applicant’s motion for his witnesses to be heard by the court *ex parte* and *in camera*.<sup>1</sup>

### **Motion for Protective Measures**

24. On 23 December 2009, the Applicant moved the court for a judicial order of protection pursuant to Article 7 of the Statute of the Tribunal and Articles 9 and 36 of its Rules of Procedure to ensure that his witnesses are not prejudiced, intimidated or retaliated against for testifying in the present case. The Applicant argued that there was *prima facie* a real danger that his witnesses would be subject to further intimidation, harassment, and obstruction to their career development.

25. The Tribunal was also requested to hold that testifying before the Dispute Tribunal amounts to a 'protected activity' within the scope of ST/SGB/2005/21 and that it is therefore within the remit of the Organisation's Ethics Office to receive complaints of retaliation or threats of retaliation based on a staff member's proposed or actual testimony before the Dispute Tribunal.

26. On the relevance of the Ethics Office to proceedings before the UNDT, the Tribunal considered Sections 1.1 and 1.2 ST/SGB/2005/21 and General Assembly

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<sup>1</sup> Decision on the Applicant’s *Ex Parte* Application, UNDT/NBI/O/2010/024, 16 February 2010.

Resolution 63/253 on the Administration of Justice at the United Nations<sup>2</sup> and expressed the view that<sup>3</sup>

[w]hereas the SGB makes it a *duty* of staff members to report any breach of the Organisation's regulations and rules, and to cooperate with duly authorized audits and investigations, the internal justice mechanism is established to ensure "respect for the rights and *obligations* of staff members and the accountability of managers and staff members alike." Read together, the relevance of the Ethics Office in respect of the protection of witnesses who testify before the UNDT seems to the Tribunal to be obvious.

27. The Tribunal held that staff members have the right to enjoy the protection conferred upon them by their contracts of employment and by the Rules and Regulations that govern the Organisation. The Tribunal endorsed the observations of Adams J in *Wasserstrom*<sup>4</sup> that

retaliation against a staff member for the performance of his or her duty by another staff member is a violation of the retaliator's fundamental obligations towards the Organization and constitutes an abuse of power requiring a stern response if the integrity of the Organization is to be maintained.

28. Going further, the Tribunal opined on the difference between ordinary protective measures as issued in national jurisdictions and the situation faced by witnesses within the internal justice system of the United Nations. In so analysing, the Tribunal said:

33. The fears of witnesses testifying before this Tribunal are very different. Witnesses appearing before this court will, most always, fear for their livelihood; they will fear intimidation and retaliation in the exercise of their functions, and to the very security of their jobs. In these cases, it is not the public that these witnesses will fear; rather, it is the Secretary-General or agents acting under his authority.

34. It is imperative therefore that staff members can be confident that it is safe for them to testify before the Dispute Tribunal. In the absence of such an assurance, it is most unlikely that witnesses will come forward.

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<sup>2</sup> A/RES/63/253, 17 March 2009.

<sup>3</sup> UNDT/NBI/O/2010/025 Decision on the Applicant's Ex Parte Application for Protective Measures for Witnesses.

<sup>4</sup> UNDT/NY/2009/044/JAB/2008/087 *Wasserstrom v Secretary General of the United Nations*, Orders on Receivability and Production of Documents, 3 February 2010, at para. 25.

29. The Applicant's motion for protective measures was granted, and a series of Orders were made to that effect.

### **The Issues**

30. There is a significant amount of evidence on the record concerning the build-up towards the decision not to renew the Applicant's contract. The Applicant's principal contention in this case is that the impugned decision was unlawful, as it was grounded on improper motive and abuse of authority.

31. In making his case to show that the impugned decision was grounded on extraneous factors, the Applicant sought to establish: (i) that Ms. Mills took a deliberately discriminatory attitude towards him as he became a pawn in the personality clash between herself and Mr. Nartey; (ii) Mr. Nartey was threatened with retaliation for testifying on behalf of the Applicant; (iii) his application to the United Nations Support Office for the African Union Mission in Somalia (UNSOA)<sup>5</sup> was thwarted through the direct and indirect actions of UNON.

32. The Respondent contended that the move to terminate the Applicant was because he did not possess the appropriate qualifications. At the hearing, this position was amended to include such matters as a flawed recruitment process and the non-expectancy of renewal clause in the contract. All points of rebuttal raised by the Respondent were challenged by the Applicant.

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<sup>5</sup> The United Nations Support Office for AMISOM (UNSOA) is a field support operation led by the United Nations Department of Field Support (DFS). UN Security Council Resolution 1863 (2009) provides UNSOA with a mandate to deliver logistics capacity support to AMISOM (African Union Mission in Somalia) critical in achieving its operational effectiveness and in preparation for a possible UN peacekeeping operation.



## **Deliberations**

### **Was the Termination of the Applicant's Contract Motivated by Extraneous Factors?**

33. The Applicant contends that several issues point to the conclusion that his termination/non-renewal was based on extraneous factors which amounted to bad faith and abuse of authority.

34. These extraneous factors included: (i) the attitude of Ms. Mills towards him; (ii) the denial of overtime to him; (iii) obstacles to his accessing PTSS premises; (iv) being left out of mailing lists and the telephone directory; (v) threats to Mr. Nartey following his testimony to the Tribunal; and (vi) the circumstances surrounding the failure of his application to UNSOA.

35. The Applicant submits that these factors, cumulatively, can only suggest that he was a victim of the poor working relationship between Mr. Nartey and Ms. Mills.

### ***The Evidence***

36. On 10 July 2009, Ms. Mills wrote to the Director of UNON Administrative Services (Director/DAS), Mr. Alexander Barabanov, requesting the termination of the Applicant and Mr. Mareka's appointments, both of whom were recruited as Procurement Assistants during her absence.<sup>6</sup> She further requested that these two staff members be replaced with Ms. Chelagat Njakai and Ms. Dorothy Oloo. The Director agreed with her recommendation, and wrote to the Chief of HRMS, Mr. Suleiman Elmi on the same day as follows.

I fully support Diana's request. Please serve the staff concerned with termination notices withdraw the offer from the one who did not report on duty yet. Please also look into the circumstances of selection of these unauthorised recruitments. In the case of Mr. Mareka I note that he is the spouse of another staff member of UNON and that he was offered a rather high step level for somebody who never worked in

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<sup>6</sup> Respondent's bundle, tab 3.

the UN (at least according to IMIS records). It looks like a possible case of favoritism...

Please also arrange for recruitment of candidates who were selected for recruitment by Diana following interviews in April 2009.

Please let Diana know if there is a need for additional paperwork from her side to implement the above.

Shasha

37. Ms. Mills told the Tribunal that the decision of the Director/DAS to terminate the employments of both the Applicant and Mr. Mareka was based on her recommendation.

38. She agreed that when she wrote to Mr. Barabanov to terminate the appointment of the Applicant and Mr. Mareka and to replace them with Ms. Chelagat Njakai and Ms. Dorothy Oloo, she was not referring to the positions but to the individuals. She disagreed that she did so because she did not like the fact that Mr. Nartey, as officer-in-charge, had taken some personnel decisions in her absence.

39. Ms. Mills was asked to explain the sentence in her email to Mr. Barabanov, "I should be most grateful if HRMS would *replace* the terminated individuals with the two candidates recommended above." [Emphasis added] Ms. Mills told the Bench that English is not her mother tongue and, to her, the sentence would mean the following:

It would be read by me that the people who have been recommended by the panel should replace Mr. Peter Mareka and Mr. Kasmani. This is how I read it. And not in the individual manner. And not as individuals but as the people who have gone through the process.

40. Under cross-examination, she conceded that a decision to terminate a staff member's contract had to be made in compliance with the rules and regulations of the United Nations. She added:

The word "termination" is a layperson's word. And for it to be construed as a legal term will be wrong because terminate meaning bring this thing to a stop, now it's up to HR to decide how they were going to bring it because I don't make HR decisions. The letter was addressed to my director and it was up to him to agree or not agree.

41. When asked what she had in mind she explained:

It was to bring the process to an end [...] if he so wishes, but it was up to HR to decide in what form, because, as you said before, there are rules and regulations safeguarding the recruitment, termination, suspension or whatever of a staff member. And that is the duty of HR. My email was a layperson's terminology, and [...] I cannot construe it legally because [...] I'm not a lawyer.

42. The Bench asked Ms. Mills what her reason was for requesting the termination of these contracts. She said her recommendation was prompted by the fact that the established procedure was not followed or what was agreed had not been followed. When she sent her recommendation to Mr. Barabanov, she said, qualifications were not her main concern.

43. Mr. Nartey testified that after Ms. Mills' return to the office, he was summoned by the Chief of HRMS, Mr. Suleiman Elmi, to explain the recruitment of the Applicant. Mr. Nartey was informed that the Applicant's recruitment was being investigated and that a written statement explaining his actions was required. Mr. Nartey submitted his explanation, by email, on 17 July 2009, attaching a handover note of the different actions/decisions he took within PTSS, including those related to staffing, during his term as officer-in-charge.<sup>7</sup> He heard nothing more about this investigation and so assumed the matter to be closed.

44. At a separate meeting, Mr. Elmi told Ms. Camara, a Procurement Officer in PTSS who headed the Contracts Unit, and who testified on behalf of the Applicant, that the contract of the Applicant would be terminated because that was what Ms. Mills wanted. Mr. Elmi also told Ms. Camara that a candidate should have been selected from the pool approved by the interview panel. Ms. Camara testified that she sent Mr. Elmi an email summarising what transpired at the interview.

45. Ms. Camara told the Court that she tried to discuss the Applicant's contract with Ms. Mills on a number of occasions, to no avail. Ms. Mills made it plain that her position was clear, and that she had communicated as much to Management.

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<sup>7</sup> Applicant's bundle, page 27.

46. For his part, the Applicant told the Tribunal that when he heard that his contract was going to be terminated, he was advised to seek the support of the staff union. The staff union then met with Mr. Barabanov and Ms. Mills, following which meeting it was decided that the Applicant's contract should run its normal course and lapse at the expiry date.

47. The Applicant also told the Court that he had tried to discuss his case with the Director-General of UNON. Before that, he met Mr. Nasser Ega-Musa (Chief of Staff *ad interim*, Office of the Director General of UNON) and Mr. Elmi. Mr. Ega-Musa had initially appeared concerned at the Applicant's predicament, and tried to contact Mr. Elmi to have the situation addressed without success. The next day, when the Applicant saw him, Mr. Ega-Musa's attitude had completely changed and he told the Applicant that there was not much he could do as this was a management decision. On the day he was due to see Mr. Steiner, Director-General of UNON, the Applicant instead met Mr. Ega-Musa and Mr. Elmi who told him that they were representing the Director-General as the latter had asked them to deal with the Applicant's case.

48. Mr. Elmi expressed surprise at the Applicant wanting to meet the Director-General on such a matter as his contract and told him that there was no substance to his case and that the Applicant should leave without a fight as nobody wants to "hire a troublemaker."

### ***Findings***

49. Having carefully reviewed the totality of the evidence relating to the termination/non-renewal of the Applicant's contract, the Tribunal will now consider whether the impugned decision was grounded on extraneous factors. The following events both individually and cumulatively give much cause for concern and are indicative of an attitude of hostility towards the applicant and constitute cogent evidence that extraneous factors were taken into account in the decision not to extend the Applicant's contract.

50. Mr. Nartey had testified that Ms. Mills refused to be introduced to the Applicant. Ms. Mills initially denied that the Applicant had been taken to her office for an introduction by Mr. Nartey. However, when asked how so many months could pass without her having ever spoken to the Applicant, she said that she was wary about “interfering with” Mr. Nartey’s staff, and that she felt she “had to be careful” as the Applicant had a case pending before the UNDT. It is clear from the combined testimony of Mr. Nartey and Ms. Camara, and the totality of Ms. Mills’ own testimony, that she spoke to everyone else within PTSS except the Applicant.

*Denial of Overtime to the Applicant*

51. On the issue of overtime, there is oral and written evidence before the Tribunal showing that the Applicant was the only staff member within PTSS to have been denied overtime payments. All his requests for overtime payment were either not approved or ignored by Ms. Mills. According to the testimonies of Mr. Nartey and Ms. Camara, everyone within PTSS worked overtime up to the maximum monthly allowance of forty hours. The exigencies of work within the Section even made it necessary for some staff members’ leave requests to be declined.

52. Ms. Mills was at pains to explain why she singled the Applicant out for the denial of overtime. Her explanations ranged from his lack of experience, to her not being apprised of what the Applicant was actually doing within PTSS. The record of evidence shows several emails between Mr. Nartey and Ms. Mills with workload statistics, details of what the former was working on and an offer to show her detailed aspects of these on the electronic application called EQUIP.<sup>8</sup> While Ms. Mills insisted that this was not sufficient information, she was unable, to explain what would constitute sufficient experience for the purposes of granting overtime approval for work and payment to someone who was already fully engaged on similar duties during normal working hours.

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<sup>8</sup> Applicant’s bundle, page 43

*Uneasy Relationship between Mills and Nartey*

53. The Applicant stated that the rationale behind the decision not to renew his contract was based on a personality clash between the section chief, Ms. Mills and Mr. Nartey. The latter confirmed that his relationship with Ms. Mills had not been an easy one. Ms. Mills' own description of the working relationship she had with Mr. Nartey shows that it was fraught with difficulties. Ms. Camara also testified to the combative nature of the relationship between Ms. Mills and Mr. Nartey and told the Court that Ms. Mills consistently rescinded whatever decision Mr. Nartey made.

54. The evidence on the nature of the relationship between Ms. Mills and Mr. Nartey was not contradicted or rebutted and the Tribunal accepts it as credible, and a reflection of the prevailing situation within PTSS at the time this case arose.

55. The Tribunal finds that Ms. Mills' account of events on this issue though evasive and sometimes inconsistent, substantially corroborated the testimonies of Ms. Camara and Mr. Nartey.

56. The Tribunal finds that Ms. Mills pursued a deliberate policy of ignoring the Applicant and denying him paid overtime work for personal reasons. In so doing, she fell woefully short of the standards of professionalism that is expected of a manager within the Organisation. The irony of this pattern of conduct by someone who professed to be so concerned in the interests of the Organisation, and more particularly in the interests of the Procurement Section, cannot be overstated.

57. As somebody held up by the Respondent, in the opening address to the Tribunal, to be well-versed in ethics and integrity, Ms. Mills is expected to have demonstrated better judgment and care in her decision making.

58. Based on the totality of the evidence before it, the Tribunal is satisfied that the Applicant has properly established that the decision to not renew his three (3) month contract was the result of personal animosity between Ms. Mills and Mr. Nartey. The events surrounding the attempt to terminate the Applicant's appointment mid-contract

clearly show bad faith on the part of Ms. Mills, whose decision it was, along with others in the Administration who sought to facilitate its execution.

59. The Tribunal is concerned at the unfortunate pettiness and games that were played resulting in the victimisation of a junior staff member.

**Was the recruitment of the Applicant flawed?**

60. As previously noted, the thrust of the Respondent's challenge to the Applicant's case is that there were procedural flaws in the recruitment of the Applicant which led to the decision to terminate the Applicant's appointment, and the eventual decision to not renew his contract, was said to be based on the alleged procedural flaws.

61. The Respondent additionally submitted, contrary to the findings of the first Management Evaluation decision, that the Applicant had no expectancy of renewal; that the statement of Mr. Nartey of a further renewal did not amount to a promise. On the point of expectancy of renewal, the Tribunal directed counsel for the Respondent to address it on the contradictory positions of the Secretary-General.

62. When the Applicant heard that his contract was not going to be renewed, he moved the Tribunal for a suspension of action and sent, as required by law, a request to the MEU for a review of the decision. In its findings, the MEU did not brand the recruitment as being procedurally flawed. In its review of the impugned decision, the MEU stated with respect to the matter of an expectancy of renewal:

The Secretary-General has concluded that the express promise made by your supervisor had caused the misapprehension that your contract would be renewed and that you relied in good faith on Mr. Nartey's assurance in this regard.

63. The Respondent relied on the email of 10 July 2009, from Ms. Mills to Mr. Barabanov, as justification for the termination of the Applicant's contract. The said email, stated in part:

[G]iven the sensitivity around the procurement function, it is essential that any staff being engaged is rigorously screened by a panel, including the CPO prior to selection, even if the posts are in the GTA category.

64. The Respondent also submitted that the testimony of Mr. Nartey and Ms. Camara justifying the propriety of the recruitment of the Applicant lacked all credibility.

65. The issue of whether the Applicant was properly recruited must be analysed in the strict context of the evidence, on the practice that obtained for the recruitment of temporary staff within PTSS and the wide discretion given to the Chief of Section to proceed with such recruitments.

66. To properly determine this issue, several questions arise: (i) did the officer-in-charge have the authority to effect short-term recruitments? (ii) what, if any, is the established procedure for such recruitments? and (iii) was the procedure breached?

67. There is evidence that the section Chief at the relevant time had broad authority to recruit temporary staff; that section chiefs could make certain calls for GTA posts and that there was no need to obtain any approvals from HR before temporary staff was recruited.

68. The Tribunal takes the view that Mr. Nartey in his capacity as officer-in-charge of PTSS had the authority to request and effect the recruitment of the Applicant. The Tribunal notes that no evidence was led to show that his designation as officer-in-charge did not include the authority to proceed with a temporary recruitment if the exigencies of the unit so demanded. The Tribunal also notes that nowhere in the communication between Mr. Nartey and HRMS/UNON pertaining to this recruitment was his authority to recruit questioned.

69. The testimonies of Mr. Nartey, Ms. Camara and Ms. Mills on the prevailing practice for the recruitment of temporary staff were consistent in that these posts were rarely advertised; candidates were obtained from (a) those who walked in with their



papers and expressed interest, (b) recommendations from other staff members and (c) from CVs forwarded by HRMS. Former interns frequently featured. There were no hard and fast rules in so far as the method of recruitment was concerned.

70. Mr. Nartey testified that his section had lost a staff member on very short notice and therefore urgently needed someone to hit the ground running in view of the workload. Ms. Mills did not agree that the workload was more than the unit had resources to cope with. But she contradicted herself in attempting to explain why all PTSS staff members, except the Applicant, were doing overtime. Ms. Mills told the Tribunal that she could not stop overtime without there being a negative impact on the output of the Section. It is abundantly clear from that explanation that the workload at the Procurement Section was such that overtime had to be resorted to in order to cope with it.

71. In light of the oral testimony of Ms. Camara and Mr. Nartey, and the documentary evidence submitted to the Tribunal on the workload, the Tribunal is persuaded that PTSS was understaffed for the workload it had to cope with. The Tribunal finds the evidence given by Mr. Nartey and Ms. Camara to be credible and essentially supported by Ms. Mills' testimony that PTSS staff needed to do overtime work.

72. Concerning the actual recruitment of the Applicant, on 23 April 2009, Mr. Nartey had sent a signed memo to Mr. Elmi, Chief HRMS/UNON requesting the said recruitment. Mr. Joerg Weich, Chief Recruitment & Classification Section for UNEP, UN-HABITAT, UNON, replied on 30 April 2009. Mr. Weich informed Mr. Nartey that the Applicant would have to be recruited at the G3 level as he did not have enough experience for a G5 post.

73. The Tribunal notes that at no time did HRMS suggest that the proper procedure for short-term/temporary recruitments was not being followed. The only issue raised was that of the grade on which the Applicant could be recruited *vis-à-vis* his qualifications. Ms. Jethwa, a Human Resources Assistant at HRMS/UNON

testified that she wrote to Mr. Nartey stating that the Applicant did not meet the qualification requirements and advised the former to select a candidate from the pool of those who had been interviewed for a G5 position. The Tribunal notes from the interview records of 9 April 2009, which Ms. Mills had chaired and which was tendered as evidence that none was qualified. The only successful candidate for a G5 position was one Ms. BK who had been recommended for and taken up a position in the Travel Section of UNON.

74. The Tribunal also notes that after the objections raised by HR as to the level on which the Applicant could be hired, Mr. Nartey decided not to pursue his request that the Applicant be appointed. However a short while later he was informed by the Applicant that he had been offered the position at the G4 level. The Respondent did not challenge the fact that Mr. Nartey had dropped the request for the recruitment.

75. It was submitted on behalf of the Respondent that Mr. Nartey had misled the Chief of Recruitment, Mr. Weich, on the matter of the recruitment of the Applicant. In so submitting, Counsel for the Respondent clearly ignored the evidence of his own witness, Ms. Jethwa, who told the Tribunal that the Chief of the Staff Administration Section made a discretionary decision to hire the Applicant. The totality of the evidence adduced on this point is contradictory and is at variance with the Respondent's submission. The Tribunal accepts Ms. Jethwa's version of events.

76. Ms. Mills repeatedly emphasised that by proceeding to recruit the Applicant as they did, Mr. Nartey and Ms. Camara put the interests of the Organisation in jeopardy, particularly that of the Procurement Section where it is vital that candidates be screened before they are recruited. However, she did not make proper inquiries upon her return to the Office to ascertain if the Applicant had in fact been screened. Instead she relied on some verbal information that a request for the Applicant's recruitment was sent to HRMS on 22 April 2009, only two days after she travelled, as conclusive proof that no screening of the Applicant was done before he was brought on board at PTSS.

77. While expounding on the practice of the screening of candidates, Ms. Mills told the Tribunal that an interview process is a means of screening candidates on conflict of interest, confidentiality, procurement guidelines, and financial regulations and rules. She explained that an interview entails candidates being asked questions on integrity, ethics, and professionalism. The candidates would be told why they could not be related to a vendor registered to conduct business with the Organisation or to anybody who wished to have an interest in the procurement process. This, she said, was the established policy as far as screening or vetting of candidates was concerned.

78. Ms. Camara however testified that screening short-term staff was done haphazardly, and that there were no hard and fast rules for how this was done.

79. The Tribunal finds it troubling that Ms. Mills had so hastily concluded that the Applicant had not been screened, in other words interviewed. She clearly acted on an assumption which was grounded on little more than suspicion and the personality conflict between herself and Mr. Nartey.

80. It is noteworthy that the screening/interview process for GTA positions which Ms. Mills expounded upon and defended in her oral evidence was very much an informal process. Candidates of *different* backgrounds and qualifications were interviewed for different positions as part of the *same* interview process. Formal interview processes are normally conducted against set terms of reference, during the course of which candidates are evaluated against each other for a particular position. This formal process was clearly not what the panel, which Ms. Mills chaired, had done.

81. There was no significant difference between the process adopted by Ms. Mills' panel and what Mr. Nartey did before recruiting the Applicant.

82. The Respondent's submission that the impugned decision was justified, and therefore necessary, because there were flaws in the recruitment process of the Applicant is not borne out by the facts and must therefore fail.

### **Abuse of Authority and/or Retaliation**

83. During the proceedings in this case, the Tribunal was seized of two preliminary motions – one for the admission of witness testimony *ex parte* and *in camera*, which was refused, and the other for protective measures that ensure there would be no retaliation against those witnesses who had agreed to testify in public. The substance of both these motions, and the Tribunal's rulings, has been discussed earlier in this Judgment and need not be restated here.

84. A principal issue before the Tribunal is whether Ms. Mills and the Director/DAS, Mr. Barabanov, in particular, and the Respondent generally, can be said to have abused their authority in arriving at the impugned decision. Additionally, the Tribunal is obliged to look into whether the abuse of authority, if found, was taken further and resulted in retaliatory conduct or threats of the same.

85. There are distinct sets of facts that raise these questions, and the Tribunal will deal with each of those in turn.

### ***Evidence***

#### ***UNSOA's Non-Recruitment of the Applicant***

86. Sometime in September 2009, the Applicant came to know of a position with the UNSOA/Mission, for which he thought himself qualified. It was a procurement post for the purposes of the Mission. The Applicant contacted the Chief Procurement Officer (CPO) at UNSOA, was interviewed and deemed qualified.

87. Sometime later, the Applicant was asked by the said CPO whether he had received an offer of temporary appointment for the procurement post in UNSOA. To the surprise of both the Applicant and the CPO, no such offer was made or received.

88. The Applicant produced a paper-trail of emails to show that his recruitment to UNSOA had been stopped by or on the advice of HRMS/UNON. In an email dated 28 September 2009 to Krishavallie Naidoo of UNSOA, Sousa Jossai of

HRMS/UNON stated that the Applicant's candidature was "eliminated from the list of candidates [...] recruited for UNSOA" because the Applicant had filed this application against the Respondent.<sup>9</sup>

89. The CPO expressed some disappointment at not being told by the Applicant that he had a matter pending before the UNDT and MEU and told him that "[i]t becomes a tricky matter when somebody litigates against an organisation."

90. Ms. Camara testified that when she followed-up on the matter with the CPO and Director of Administrative Services for UNSOA, she was told that the issuance of the Applicant's letter of appointment was imminent, and that UNSOA was waiting on UNON to issue the contract. UNON was, at the time, providing administrative services to UNSOA.

91. Given UNON's reluctance to issue the Applicant with a contract, Ms. Camara was later made to understand that UNSOA, being a start-up mission that needed staff quickly, decided against recruiting the Applicant. According to Ms. Camara, that was the "official position." The reality was that the "nobody wanted to recruit some[one] who was taking the United Nations to Court...[UNSOA] did not want to step on UNON's toes." Mr Nartey corroborated Ms. Camara's testimony.

***The Meeting of Messrs Nartey, Barabanov and Ms Mills***

92. Mr. Nartey testified to a meeting that took place on 14 October 2009 between himself, Ms. Mills and Mr. Barabanov. He had asked for the meeting to seek the Director/DAS' assistance in resolving the conflict between him and Ms. Mills.

93. Mr. Nartey made notes on what had transpired at the end of the meeting which he typed up and sent to the others two persons who were in the meeting. The notes were also filed and produced to the Tribunal and the Respondent. Counsel for the Respondent made extensive submissions attacking the veracity of the note and argued that the Court rule it inadmissible. Available evidence shows that when the

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<sup>9</sup> Email dated 28 September 2009 from Sousa Jossai, to Krishnavallie Naidoo of UNSOA.

note was sent to Mr. Barabanov and Ms. Mills soon after the meeting, it elicited no comment from either of them. Counsel still persisted with the objection. The Tribunal then ruled that as two of the three attendees of that meeting have been listed as witnesses, the note would be admitted as a statement rather than for the truth of its contents, and that Mr. Narthey should give *viva voce* testimony of what transpired at the meeting.

94. Mr. Narthey testified that, at the said meeting, Mr. Barabanov expressed the opinion that he (Narthey) was working at cross-purposes with Ms. Mills and that one of them would have to leave the Organisation. He questioned Mr. Narthey's loyalty to the Organisation and suggested that he had no authority to make promises about extensions of contract and that appropriate action should be taken against him for insubordination for going against the express instructions of Ms. Mills. Mr. Barabanov also accused him of inappropriately using the system to recruit the Applicant and wondered what his motive was. Mr. Narthey was also accused of bulldozing his way through HRMS to recruit the Applicant, and of recruiting an unqualified candidate over a pool of qualified ones.

95. Mr. Barabanov also told Mr. Narthey during the meeting that it would be in his interest if he decided to seek employment elsewhere given his bad reputation within the Organisation. The Director/DAS also suggested that Ms. Mills should begin recording his activities for disciplinary or separation purposes. Matters such as his hours and quality of work and attendance were mentioned by Mr. Barabanov as possible areas to fault the witness. He further suggested that it would be difficult to punish Mr. Narthey for insubordination because Ms. Mills had not made any notes and was not in possession of hard evidence to show as much.

96. Mr. Narthey stated that he was very troubled after the meeting. He sought the advice of his colleague, Ms. Camara, who suggested that he make a note of the meeting and send it to the parties who were involved.

97. Ms. Mills, who admitted that she was present at this meeting, denied that Mr. Nartey was threatened by the Director of Administration. She also denied hearing Mr. Barabanov say that testifying before the Tribunal was not in the interests of the Organisation, or that Mr. Nartey had bulldozed the Applicant into the post. She said that she did not recall Mr. Barabanov advising her to make detailed records of everything that Mr. Nartey did for the purposes of possible future action against him. She told the Tribunal that she only remembered Mr. Barabanov mentioning Mr. Nartey's behaviour in relation to certain procurement related matters.

98. She, however, recalled Mr. Nartey being accused by Mr. Barabanov of working at cross-purposes with her and sabotaging the interests of the Organisation or words to that effect. Ms. Mills added that Mr. Barabanov had on several occasions spoken to Mr. Nartey and her to improve their relationship. She explained that the message that Mr. Barabanov was trying to put across was to express his disappointment at the lack of improvement in their working relationship.

99. She recalled reference to Mr. Nartey's attendance at work and agreed during questioning that there was a reference to Mr. Nartey being a witness before the Tribunal. She said that Mr. Barabanov made mention of the fact that he was most disappointed at Mr. Nartey for testifying without considering the interests of the Organisation or his own interest and the repercussions of such testimony. She thought that the Director's views were appropriate.

100. When asked whether she recalled an email sent to her by Mr. Nartey on 22 October 2009 with an attachment of what he called a 'transcript', which was a note of what transpired at the meeting, she conceded that she may well have received it but did not open the attachment. Later, in re-examination, she stated that she had seen the email two days before she came to give evidence.

### ***Findings***

101. Within the context of the United Nations, abuse of authority constitutes "prohibited conduct." ST/SGB/2008/5 defines abuse of authority as

the improper use of a position of influence, power or authority against another person. This is particularly serious when a person uses his or her influence, power or authority to improperly influence the career or employment conditions of another, including, but not limited to, appointment, assignment, contract renewal, performance evaluation or promotion. Abuse of authority may also include conduct that creates a hostile or offensive work environment which includes, but is not limited to, the use of intimidation, threats, blackmail or coercion. Discrimination and harassment, including sexual harassment, are particularly serious when accompanied by abuse of authority.

102. Section 2.2 of ST/SGB/2008/5 enjoins the Organisation to take

all appropriate measures towards ensuring a harmonious work environment, and to protect its staff from exposure to any form of prohibited conduct, through preventive measures and the provision of effective remedies when prevention has failed.

103. The gravity with which abuse of authority is treated is reflected in the fact that it is considered conduct which may lead to disciplinary action. ST/SGB/2008/5 lists elaborate preventive and corrective measures which can be taken in cases of alleged abuse of authority. Section 5 dealing with “Corrective Measures” describes the informal and formal procedures that can be triggered towards a resolution of the issue.

104. Section 5 of the Bulletin on “Corrective Measures” enjoins individuals who believe that they are victims of abuse of authority to deal with the issue as soon as it has occurred. It also directs managers and supervisors to take prompt and concrete action in response to such an allegation.

105. In the present matter, the Applicant did not resort to the corrective measures described in the Bulletin. The events in this case unfolded in a manner, and at a pace, that made resort to the administrative procedure extremely difficult. Given the short-term/temporary nature of the Applicant’s appointment, his litigation of the dispute, and the tenor of the responses he received in trying to have his grievance informally resolved, it is clear to the Tribunal that the odds were neatly stacked against him.

106. Where the Court receives clear, unchallenged evidence showing abuse of authority, the Tribunal finds that it has the authority to address the issue on the basis of the evidence before it.



107. The evidence before this Court clearly shows that efforts to have the issues between Mr. Nartey and Ms. Mills resolved by the Director of Administration unfortunately only brought to the fore the Director of Administration's disdain for the formal component of the internal justice system and those who seek recourse through it.

108. The Tribunal finds that the Director of Administration clearly took the view that testifying for the Applicant before the Tribunal was an act of disloyalty which was at cross-purposes with the interests of the Organisation. Ms. Mills' testimony substantially corroborated Mr. Nartey's version of events, which account the Respondent did little to refute or challenge.

109. The Tribunal also finds, and notes with grave concern, that the Director's statements constitute veiled retaliatory threats. It follows from this finding that the orders of the court on protective measures for the Applicant's witnesses, must continue to remain live.

110. It is abundantly clear to the Tribunal that Ms. Mills as the Chief of PTSS abused the authority vested in her and created a hostile and offensive work environment for the Applicant. Messrs Barabanov and Elmi, as senior managers, did nothing to ameliorate the situation. Instead, they facilitated and supported Ms. Mills' plans to have the Applicant terminated and widened the berth for the treatment she meted out to the Applicant within PTSS.

111. The evidence adduced as to the events surrounding the Applicant's recruitment to UNSOA further paint an unsavoury and troubling picture. While it is clear to the Tribunal that the Applicant's recruitment to UNSOA was thwarted by the dilatory conduct of HRMS/UNON, the paper trail of emails between UNSOA and UNON, without the testimony of the authors of those emails, leaves the Tribunal with insufficient evidence to definitively conclude that their actions were, in fact, retaliatory.

## CONCLUSION

112. The Respondent's actions in respect of the non-renewal of the Applicant's contract and the manner in which it was done cannot be justified. The Tribunal's findings on the facts of this case clearly show that the treatment meted out to the Applicant strike most unfortunately at the core values, standards and issuances of the United Nations. Extraneous factors rarely manifest themselves as clearly as they have done in this case.

113. While it is within the Secretary-General's discretion to make decisions relating to hiring, termination and non renewal, his exercise of that discretion is not unfettered. It is trite law that any discretion conferred on a public body or authority must be exercised in a judicious manner.<sup>10</sup> The *Wednesbury* principle is instructive in this regard:

A failure by a public authority to have regard to matters which ought to have been considered, which is to be derived either expressly or by implication from the statute under which it purports to act, will be an abuse of its discretion. Similarly, if certain matters are considered, which from the subject matter and the general interpretation of the statute are held by the court to be irrelevant, then this will amount to a defect in the decision-making process.<sup>11</sup>

114. The Tribunal finds that the Applicant sufficiently discharged his burden of proof. He showed that the actions of the Respondent's agents were unfair, improperly motivated, and wholly arbitrary. The Tribunal reiterates that:<sup>12</sup>

[A] staff member under a fixed-term appointment is as any other staff member also entitled to be treated fairly according to due process and rule of law principles. It is not open to dispute that a fixed term appointment dies a natural death at the end of the period of the contract. But there may be circumstances that where the non renewal may be due to factors that adversely affect a staff member to such an extent that monetary compensation is no answer. Whilst management has discretion not to renew, that discretion must be used judiciously and in good faith. That discretion cannot be considered to be an unfettered one in the sense that it would always dispense the decision maker with the need to carefully weigh in the balance the

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<sup>10</sup> *Banerjee*, UNAT Judgment No. 344, 1985; *Handelsman*, UNAT Judgment No. 885, 1988.

<sup>11</sup> *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 King's Bench p. 223, at p. 228.

<sup>12</sup> *Georges Tadonki v. Secretary-General of the United Nations*, 1 September 2009, Case No. UNDT/NBI/2009/36.

consequences of the decision. The myth of unfettered discretion is inimical to the rule of law principles.

115. The Applicant was recruited at a time when there was a pressing need for additional staff within PTSS. The use of short/temporary fixed-term appointments was accepted practice within the Organisation; it enabled the Organisation to recruit staff relatively quickly and on short notice for specifically required functions to be carried out.

116. Support for that view can be found in the following observations of the International Labour Organisation Administrative Tribunal (ILOAT) in relation to fixed-term appointments:

Inevitably, in the conditions in which the Organization carries on its work, there arises an expectation that normally a contract will be renewed. The ordinary recruit to the international civil service, starting as the complainant did at the beginning of his working life and cutting himself off from his home country, expects, if he makes good, to make a career in the service. If this expectation were not held and encouraged, the flow to the Organization of the best candidates would be diminished. If, on the other hand, every officer automatically failed to report for duty after the last day of a fixed term, the functioning of the Organization would, at least temporarily, be upset. This is the type of situation which calls for -- and in practice invariably receives -- a decision taken in advance. It was not the application of abstract theory but an understanding of what was practical and necessary for the functioning of an organisation that caused the Tribunal to adopt the principle that a contract of employment for a fixed term carries within it the expectation by the staff member of renewal and places upon the organisation the obligation to consider whether or not it is in the interests of the organisation that that expectation should be fulfilled and to make a decision accordingly;<sup>13</sup> and

[A] fixed-term appointment will automatically cease to have effect upon expiry. But according to the case law a contract of service, even if for a fixed term, creates in law a relationship of employment; that relationship exists in an administrative context and is subject to a set of staff regulations; and there may therefore be requirements or consequences that go beyond the bounds of the contract as such. So the Tribunal may consider ordering the reinstatement even of someone who held a fixed-term appointment provided that the circumstances are exceptional. It may do so when an organisation makes a practice of granting fixed-term appointments for the performance of continuing administrative duties.<sup>14</sup>

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<sup>13</sup> *Perez de Castillo*, ILOAT Judgment 675, 1985.

<sup>14</sup> *Amira*, ILOAT Judgment No. 1317, 1994.

117. The Tribunal finds it particularly telling that the Respondent made little or no effort to rebut the Applicant's allegations of extraneous factors. The Respondent chose instead to respond with other grounds justifying the non-renewal, principally by arguing that the combination of there being no expectancy of renewal and an allegedly flawed recruitment process justified the impugned decision and the manner in which it was sought to be effected. These arguments put forward by the Respondent were effectively rebutted and thoroughly discredited by the Applicant in evidence and legal submissions and have not served to advance or establish the Respondent's case.

118. The case for the Applicant succeeds.

## **COMPENSATION**

119. The Applicant claims compensation under the following heads: for (i) loss of employment and/or non-renewal in the amount of 24 months net base salary (ii) damage to career prospects; (iii) due process violations (iv) US 20,000 for harm resulting from the appalling manner in which the Ms Mills treated the Applicant and (v) harm to reputation in the amount of USD 10,000.

120. In calculating the compensation awarded, the Tribunal has considered the provision in the Statute limiting compensation to two years net base salary unless there are exceptional circumstances to go above that figure. From a reading of that provision, the Tribunal takes the view that the framers had in mind only a breach of the contract of employment and therefore provided for compensation on that basis alone. However, in the process of a termination of a contract of employment, there are other considerations that come into play in addition to the strictly monetary compensation that results from the loss of employment.

121. The present case is a clear illustration of this. In these circumstances, the Tribunal by virtue of its powers under Article 19 of the Rules of Procedure is mandated to make any order for the fair and expeditious disposition/determination of the case, and can therefore go over and above the strict monetary compensation

provided for by the Statute. This approach would also be totally consonant with the principles of the rule of law that guide the Tribunal as provided for Resolution 63/258 of the General Assembly. One of the basic principles of the rule of law is that any individual, including an employee, must be compensated for any harm he/she suffers at the hands of the employer, provided there is a causal link between the loss of the employment and actions of the employer.

*Breach of Contract/Loss of Employment*

122. The Tribunal heard evidence that other staff members in contractual situations similar to that of the Applicant have been renewed several times and a significant number are eventually regularised. The Applicant submits that it is very likely that he would have been similarly renewed had it not been for the extraneous factors which prompted the impugned decision.

123. The Tribunal will not speculate on whether or not the Applicant would have been renewed. The Tribunal however notes, with approval, the Secretary-General's decision by way of Management Evaluation that an expectancy of renewal was in fact created by the promise made to the Applicant. The Tribunal also notes that, in so deciding, the Secretary-General was silent on the extraneous factors which the Applicant alleges formed the basis of the impugned decision. Those extraneous factors were put in evidence by the Applicant as part of his two Applications for suspension of action and his substantive Application, which is the subject of the present Judgment.

124. The Tribunal's factual findings on the extraneous factors alleged have been clearly set out earlier in this Judgment and need not be enumerated here. For present purposes, the Tribunal reiterates its findings that the decision to not renew the Applicant's appointment was tainted with bad faith and improper motive. That a decision on a matter as serious as a contract of employment was taken with such poor judgment, and because of personal and professional differences between the

Applicant's first and second reporting officers, demonstrates conduct most unbecoming of the actors involved.

125. In light of these factual findings, the Tribunal awards the Applicant nine (9) months net-base salary.

126. The Tribunal notes that the Applicant was compensated with three (3) months' salary for having relied, to his detriment, on the promise of a six-month contract by his supervisor.

127. The Tribunal therefore adjusts its award under this heading to reflect what has already been paid, and orders the payment of six (6) months net-base salary.

*Damage to Career Prospects*

128. The Applicant stated that he left a job with good career prospects to join the United Nations, which he believed would lead him on a better career path.

129. Given the age of the Applicant, the number of years he has been in employment and the number of years he has ahead of him, the Tribunal does not agree that the loss of his job in PTSS would have damaged his career prospects as a whole.

130. The request for compensation on this ground is therefore refused.

*Violation of Due Process*

131. It is abundantly clear that the requirement of due process was totally disregarded. Once Ms. Mills returned, the die was cast in so far as the Applicant was concerned. In the eyes of Ms. Mills, the Applicant had to leave at any cost.

132. She was unjustifiably dismissive of his qualifications and suitability for the appointment. Furthermore she was intent on impugning the integrity of the appointment process ignoring all evidence to the contrary. She enlisted the assistance

of senior managers in her quest to get rid of the applicant. .The Applicant is awarded three (3) months net base salary.

*Mistreatment by Ms. Mills*

133. The Tribunal agrees with the submissions of Counsel that the evidence overwhelmingly shows that the Applicant was subject to a work environment that can only be described as hostile. He was totally ignored by Ms. Mills; he was denied access to his office; his name was deliberately omitted from the PTSS mailing list; and he was the only staff member to have been denied overtime.

134. Whatever Ms. Mills' views were on the propriety of the Applicant's appointment in her absence, she had a duty to ensure that the work environment which she managed was conducive to the needs of the staff members in her section and the Organisation. The record of written and oral evidence before the Tribunal shows judgment on the part of Ms. Mill as a manager to have been both poor and objectionable.

135. The Tribunal accordingly awards the Applicant USD15, 000 under this head.

*Loss of Reputation*

136. The Tribunal has made findings on the Applicant's prospects at UNSOA and the loss of the Applicant's opportunity for employment there. The Tribunal has also considered the evidence tendered in respect of the "advice" he received when seeking to challenge the impugned decision, and how 'troublemakers' such as himself apparently fare when engaging in such a challenge. The Applicant's witnesses were likewise subject to direct and indirect threats of dire consequences for testifying before the UNDT.

137. The Tribunal finds that at the time of these events the Applicant's professional reputation within the UNON complex was adversely prejudiced.

138. The Tribunal awards the Applicant USD 5000 under this heading.

**JUDGMENT and CONSEQUENTIAL ORDERS**

139. Having considered the facts as presented in the Application, pursuant to Article 10.5 (a) and (b) of the UNDT Statute, and Articles 19 and 36 of the Rules of Procedure, the Tribunal:

- i) **ORDERS** the payment of nine (9) months net base salary and USD 20,000 as computed above:
- ii) In assessing the damages, the Tribunal emphasizes that it took care to avoid double counting under the heads of the awards made.
- iii) **REAFFIRMS** the Orders issued in UNDT/NBI/O/2010/25 that Ms. Jainaba Camara and Mr. Felix Nartey are not to be subjected to:
  - a. any form of intimidation or threats, for testifying before the Tribunal;
  - b. threats to or actions against the security of their employment, or development of their career, with the United Nations; and
  - c. retaliatory conduct of any other sort;
- iv) **ORDERS** that the Ethics Office remain seized of the matter and monitor the situation for further action should there arise allegations of violation of this Order;
- v) **DIRECTS** the Registrar to serve a copy of this Judgment on the Ethics Office; and



- vi) **REMINDS** the Parties of the seriousness of this matter so that any breach of this Order by either of the Parties or the Ethics Office may trigger the application of the accountability provision in Article 10 (8) of the Statute.

*(Signed)*

Judge Boolell

*(Signed)*

Judge Izuako

*(Signed)*

Judge Meeran

Dated this 26<sup>th</sup> day of April 2012

Entered in the Register on this 26<sup>th</sup> day of April 2012

*(Signed)*

Jean-Pelé Fomété, Registrar, UNDT, Nairobi