



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2010/060

Order No.: UNDT/2012/073

Date: 22 May 2012

Original: English

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**Before:** Judge Goolam Meeran

**Registry:** New York

**Registrar:** Hafida Lahiouel

CHUGHTAI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for applicant:**

Edwin Nhliziyo

**Counsel for respondent:**

Melissa Bullen, ALS/OHRM, UN Secretariat

1. On 12 April 2010, the Applicant filed his application in which he contended that “[t]he punishment meted out to [him] for the charge of receiving, storing ... and disseminating pornographic material was excessive and undeserved”. He further submitted that the Respondent had failed to award him “moral damages and compensation for being falsely accused and suspended from work for some three years”.

2. On 12 May 2010, the Respondent filed and served his reply in which he requested that the application be dismissed.

3. By Order No. 48 (NY/2012) dated 13 March 2012, the parties were called to a case management discussion on 23 March 2012 for the purpose of identifying and clarifying the claims and issues in the case and to make any necessary orders for the further progress of the case towards a resolution either through conciliation, mediation or by judicial determination.

4. Following this case management discussion, the Tribunal issued Order No. 66 (NY/2012) of 23 March 2012. The Tribunal noted that the claims were agreed as follows (see para. 2):

a. That the penalty for the disciplinary offence of “receiving, storing on a UN computer, and disseminating pornographic material” was excessive and in all the circumstances disproportionate to the gravity of the offence proven;

b. That the Secretary General failed to award to the Applicant financial compensation for moral damages for being accused falsely and suspended from work for a period of three (3) years;

c. The Applicant was not presenting a freestanding complaint of loss of the opportunity of promotion. However, in the event of his substantive claim succeeding he would be relying upon loss of promotion opportunities as a direct consequence of a delayed and flawed disciplinary process, as part of his claim for enhanced compensation.

5. Furthermore, by Order No. 66 (NY/2012), in the absence of an alternative resolution to the dispute, the Tribunal proposed to arrange a hearing on the merits. The parties were further ordered to file written submissions and additional information, which they did.

6. After considering the parties' responses to Order No. 66 (NY/2012), the Tribunal issued Order No. 71 (NY/2012) dated 2 April 2012 inviting the parties to a further additional case management discussion on 4 April 2012.

7. At this case management discussion, with the consent of the parties, the Tribunal shared its analysis of the issues and the strengths and weaknesses of their respective contentions. In accordance with art. 15.1 of the Rules of Procedure, the Tribunal proposed to the parties that they should consider seriously the option of an alternative resolution of their dispute. The Tribunal encouraged them to think positively and constructively on the benefits of a negotiated agreement, failing which the previously scheduled hearing on the merits would proceed. The parties were given time to consider this option.

8. By a joint request for referral to mediation, filed on 5 April 2012, the parties informed the Tribunal that they had agreed to engage in negotiations for the purpose of informal resolution. They sought an order under art. 10.3 of the Statute that the case be referred to mediation and requested that the proceedings be suspended for three months for that purpose.

9. By Order No. 79, the Tribunal referred the case to the Mediation Services of the Ombudsman pursuant to art. 15 the Rules of Procedure of the Dispute Tribunal. The Tribunal suspended the proceedings for one month until 10 May 2012, noting that:

As to the length of time requested for staying the proceedings, the Tribunal considers that taking into account the issues in the case, as well as the parties' willingness to resolve this matter, the period of three months requested for a stay of proceedings would appear

excessive. It should be noted that art. 10.5 of the Statute provides that “the time limit for mediation normally shall not exceed three months”. There does not appear, at present, to be any special reason or factors in this case to suppose that they would need as much time as three months. The parties indicated their willingness to explore an alternative resolution to this dispute. They would know within a matter of a week or so whether there is any reasonable prospect of an amicable resolution. The Tribunal takes into account that this is a case that has been pending before it since 2010 and which relates to events that took place in 2005. It would be unhelpful to approach mediation with such a relaxed timeframe in mind, as opposed to a desire to resolve this longstanding dispute without delay.

10. The Tribunal further ordered that if no agreement was reached by 10 May 2012, and in the absence of any leave granted for an extension of time, the hearing on the merits of the claim would take place on 15 and 16 May 2012.

11. Upon the request of the Mediation Services of the Ombudsman, the Tribunal extended the time limit for mediation by Order No. 98 (NY/2012) dated 10 May 2012. The Tribunal noted that, given its work commitments and to assist it in its deployment of resources, it would be helpful for the matter to be completed and the appropriate notice to be sent by 22 May 2012.

12. By letter dated 16 May 2012, the Mediation Services of the Ombudsman advised the Tribunal that “with the consent of both parties ... despite efforts to settle this matter in mediation, there has been no settlement”.

13. On 16 May 2012, the parties filed a joint request for a case management discussion as they sought “the assistance of the Tribunal in facilitating the progress of this case towards resolution through mediation or conciliation ... to identify and clarify the applicable principles of compensation”.

14. By Order No. 104 (NY/2012) dated 16 May 2012, the Tribunal offered to hold a case management discussion on 18 May 2012.

15. At this case management discussion, the Tribunal provided its general views on compensation. The Tribunal adjourned to give the parties an opportunity for private discussions. When the case management discussion was resumed, the parties requested that a hearing be held on 21 May 2012. This motion was granted and the Tribunal specifically requested the attendance of the Applicant so that he could give evidence on certain issues which appeared to the Tribunal to be relevant and important.

16. During the Applicant's evidence on 21 May 2012, it emerged that one of the significant factors inhibiting settlement discussion was the existence of another outstanding matter which arose from the issues in this case. He explained the basis of his concern and expressed a willingness to resolve this issue before a final agreement could be reached. The Tribunal offered guidance and adjourned the hearing so that the parties could have further private discussions.

17. Upon resuming the hearing, the parties informed the Tribunal that a final settlement agreement had been reached. This was confirmed by the Applicant, who indicated his understanding and acceptance of the terms.

18. The Tribunal adjourned the hearing to allow the parties time to finalise and to sign the agreement.

19. By email of the same date, the Respondent confirmed to the Tribunal that "the written agreement, reflecting the terms of settlement, has been executed by both parties".

### **Consideration**

20. At the hearing on 21 May 2012, the Applicant gave evidence in the course of which he was asked by the Tribunal if all outstanding matters arising from his present case were resolved. He confirmed that they were and that there were no further issues arising from these proceedings.

21. The complication arising from the new matter referred to in para. 16. above could not possibly have been resolved without the Applicant having been afforded the opportunity of giving evidence and explaining his concerns.

22. The Tribunal finds that there has been a final disposal of all outstanding issues arising from the Applicant's claims before the Tribunal.

**Conclusion**

23. Terms of settlement have been agreed between the parties. They have confirmed that the said terms have been fully executed and that there are no outstanding claims arising from the present case.

24. In the circumstances, it is the judgment of the Tribunal that the case be closed.

*(Signed)*

Judge Goolam Meeran

Dated this 22<sup>nd</sup> day of May 2012

Entered in the Register on this 22<sup>nd</sup> day of May 2012

*(Signed)*

Hafida Lahiouel, Registrar, New York