



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2010/025/  
UNAT/1674  
Judgment No.: UNDT/2013/111  
Date: 30 August 2013  
Original: English

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**Before:** Judge Vinod Boolell  
**Registry:** Nairobi  
**Registrar:** Abena Kwakye-Berko, Acting Registrar

GOODWIN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for the Applicant:**  
George Irving

**Counsel for the Respondent:**  
Steven Dietrich, ALS/OHRM

## **Introduction**

1. The Applicant is a former staff member of the United Nations Mission in Sudan (UNMIS) who was placed on Special Leave With Full Pay (SLWFP) on 16 January 2006 following issuance of a December 2005 draft audit report by the Office of Internal Oversight Services (OIOS) into procurement activities and pending a follow-up investigation by a specially-constituted OIOS investigative body known as the Procurement Task Force.

2. The Applicant is appealing against the decision of the Secretary-General to place him on SLWFP pursuant to former staff rule 105.2(a)(i) effective 16 January 2006. He alleges that this decision has violated his rights and resulted in significant damage to him given the manner in which it was imposed.

## **Procedural history**

3. Following the decision to place him on SLWFP, the Applicant appealed to the former Joint Appeals Board (JAB) on 15 May 2006. The JAB found that “the Respondent’s actions constituted a fundamentally serious and damaging violation of the [Applicant’s] due process rights as well as to his reputation” and recommended compensation in the amount of two years net base salary at the time the decision was implemented on 16 January 2006. The Respondent rejected the recommendation of the JAB.

4. In this connection, on 12 August 2008, the Deputy Secretary-General transmitted a copy of the JAB report dated 30 August 2007 to the Applicant and advised him of the Secretary-General's decision which was as follows:

The Secretary-General has examined your case in the light of the JAB’s report and all the circumstances of the case. He is of the view that it cannot be determined that the decision to place you on SLWFP was taken in a manner that resulted in a violation of your due process rights or in damage to your reputation. He has therefore decided not to accept the conclusions and recommendations of the JAB and has also decided to take no further action in this matter.

As a general comment, the Secretary-General notes that the JAB erroneously stated in its report that, according to an Associated Press release, the Under-Secretary-General for Management and the UN Spokesman identified the eight staff members, including yourself. The Secretary-General notes that the Associated Press report clearly attributes this information to unnamed sources.

5. The Respondent accepted the recommendations of the JAB in regard to the other seven staff members who were also on SLWFP. The Applicant avers that this amounts to discriminatory treatment.

6. On 24 February 2009, the Applicant filed an application to the former United Nations Administrative Tribunal for rescission of the Respondent's rejection of the findings and recommendation of the JAB. The Respondent submitted his answer on 15 October 2009.

7. As a result of the transitional measures relating to the introduction of the new system of administration of justice, the case was transferred from the former United Nations Administrative Tribunal to the United Nations Dispute Tribunal ("the Tribunal") on 1 January 2010.

8. The Tribunal issued Order No. 132 (NBI/2010) on 19 July 2010 ordering the Parties to consult on the possibility of a mediated settlement. On 30 August 2010, the Parties informed the Tribunal in a joint submission that the matter would not benefit from mediation given their respective positions.

9. However, at a case management hearing held on 21 July 2011, The Parties advised the Tribunal of their willingness to consider the possibility of resolving the matter through an amicable settlement. On 22 August 2011, the Parties informed the Tribunal that they had reached an agreement "on the principle of an amicable settlement" but required additional time to finalize their discussions on the terms. On 26 August 2011, the Parties requested a period of 60 days to finalize the agreement. This request was granted on the condition that the Parties provide a report to the Tribunal on 23 September 2011.

10. On 23 September 2011, the Parties requested a postponement of proceedings to 3 October 2011 to finalize their settlement discussions. The Tribunal granted an extension to 14 October 2011<sup>1</sup>.

11. On 14 October 2011, the Applicant informed the Tribunal in a joint submission that the negotiations had not been successful and that he wished to proceed with his Application.

12. On 21 October 2011, the Applicant submitted a motion for summary judgment. The Respondent submitted a response on 8 November 2011.

13. In view of the Parties joint submission<sup>2</sup> that they would not call any witnesses and as such, they did not consider an oral hearing necessary, the Tribunal decided that the matter is suitable for consideration on the documents and did not to hold a hearing on the merits.

### **Summary judgment**

14. The Applicant asserts that summary judgment should be granted in his favor because: (i) there are no issues of fact in dispute; and (ii) the legal issues in the case had been fully reviewed, adjudicated and decided in two separate judgments arising out of the same set of facts. The Applicant asserts that the only outstanding issue for determination is remedies.

15. In response to the Applicant's motion the Respondent avers that there is a dispute as to the material facts of the case and that there is a dispute on the following issues:

- a. Whether the Applicant was derelict in his managerial duties;
- b. The reasons for his placement on SLWFP; and
- c. Whether the Applicant was treated differently to other staff members.

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<sup>1</sup> See Order No. 122 (NBI/2011).

<sup>2</sup> Joint submission in response to Order No. 132 (NBI/2010).

16. Pursuant to art. 9 of the Rules of Procedure of the Dispute Tribunal, to succeed in a motion for summary judgment, a party must show that: (i) there is no dispute as to the material facts of the case; and (ii) he/she is entitled to judgment as a matter of law.

17. The record clearly indicates that the present case is not one where the factual matters, let alone the legal issues, are straightforward. Consequently, the Tribunal does not consider this case to be one in which the Applicant is entitled to judgment “as a matter of law”. Accordingly, the Applicant’s motion for summary judgment is rejected.

### **Facts**

18. The Applicant has been a United Nations staff member since February 2001. Effective March 2004, he was appointed to the United Nations Advance Mission in Sudan (UNAMIS), where he served at the P-4 level. Effective 24 March 2005, the Security Council by its resolution 1590 (2005) transferred all functions performed by UNAMIS, together with its staff and logistics, to the United Nations Mission in Sudan (UNMIS). Accordingly, the Applicant served with UNMIS initially as a Logistics Officer and subsequently as the Chief Aviation Officer against a P-5 post until December 2005.

19. In response to concerns about potential misconduct and corruption in the Department of Peacekeeping Operations (DPKO), the General Assembly adopted resolution 59/296 (Administrative and budgetary aspects of the financing of the United Nations peacekeeping operations: cross-cutting issues), adopted on 22 June 2005, section IV of which, stated in part:

The General Assembly,

4. *Requests* the Secretary-General, as a matter of priority, to entrust the Office of Internal Oversight Services with a comprehensive management audit to review the practices of the Department of Peacekeeping Operations and to identify risks and exposures to duplication, fraud and abuse of authority in the following operational areas: finance, including budget preparation; procurement; human resources, including recruitment and training;

and information technology, and to report thereon to the General Assembly at its sixtieth session;

5. *Also requests* the Secretary-General to entrust the Office of Internal Oversight Services, in the light of the increasing demands with which the Department of Peacekeeping Operations is faced and the burden this is putting on its functioning, with carrying out a review of the management structures of the Department, while taking into account the Security Council mandates and existing recommendations formulated on previous occasions by the Office of Internal Oversight Services and the Board of Auditors and paying specific attention to the interaction, coordination and cooperation of the Department with other Secretariat departments and offices, including but not limited to the Department of Political Affairs, the Department of Public Information, the Office of Programme Planning, Budget and Accounts and the Department of Management, as well as the relevant funds and programmes, and to report thereon to the General Assembly at its sixty-first session.

20. Between September and December 2005, OIOS conducted a management audit of the Department of Peacekeeping Operations. On 4 October 2005, the outside consulting firm of Deloitte and Touche (Deloitte) was tasked by the Secretariat to conduct a six-week, forward-looking diagnostic assessment of internal procurement controls. Deloitte ultimately issued its report on “Assessment of Internal Controls in the United Nations Secretariat Procurement Operations” on 30 November 2005 (Deloitte Report).

21. In early December 2005 a draft management audit report by OIOS (Draft OIOS Report) was circulated and its contents, involving several cases of alleged procedural irregularities, were subsequently leaked to the press.

22. On 10 January 2006 the Applicant was recalled to United Nations Headquarters in New York.

23. On 12 January 2006, an ad hoc Procurement Task Force (PTF) was established by OIOS to investigate allegations of wrongdoing in United Nations procurement activities under specific terms of reference. The PTF commenced full operations in April 2006.

24. On 16 January 2006 Mr. Mark Malloch Brown, then Chef de Cabinet, informed the Applicant of the following:

1. In view of the ongoing audit and investigation into the Organization's procurement activities, the Secretary-General has decided that it is in the best interest of the Organization to place you on special leave with full pay pursuant to staff rule 105.2(a) (i), effective immediately.

2. While on special leave, you will not be discharging any of your normal functions but will be expected to cooperate fully with all audit and investigation processes. The situation will be assessed following an appropriate determination of the facts, and you will be returned to duty if no further action is required at that time.

3. I wish to emphasize that your placement on special leave with full pay is a purely administrative measure, which is not disciplinary in nature and is taken to assist the Organization in conducting a full assessment of the situation.

25. Prior to the Applicant's placement on SLWFP, he was provided with a copy of the Draft OIOS Report and allowed to submit comments, which he did in January 2006. However, according to the Applicant his comments were not included in the formal DPKO reply to the draft OIOS Report and subsequently PTF initiated an investigation into the allegations relating to his role in UNMIS.

26. Following a management audit of DPKO and the Department of Management (DM), OIOS issued its final report on 19 January 2006 (Final OIOS Report). The same day, an Associated Press story was published which named the Applicant as well as the seven other staff members as the staff placed on SLWFP.

27. On 30 January 2006, the then Secretary-General disseminated a letter on procurement activities to United Nations staff that informed, *inter alia*, of an OIOS investigation into a number of cases of possible fraud, abuse and waste that had been identified during an audit; and that 8 staff members "in positions related to procurement" had been placed on SLWFP in "response to the findings" of the audit report.

28. By a letter dated 17 April 2006, the Applicant submitted a request for administrative review to the Secretary-General. By a letter dated 21 April 2006, Ms. Adele Grant, then Officer-in-Charge, Administrative Law Unit, Office of Human Resources Management (OHRM) informed the Applicant as follows:

[T]he decision to place you on [SLWFP] was taken by the Secretary-General in the interests of the Organization pursuant to staff rule 105.2(a)(i) in view of events taking place in the procurement area, relating to issues which arose when you were serving as Chief Aviation Officer. These events are subject to a number of fact-finding investigations within the Organization, as well as investigations by national bodies.

Your placement on [SLWFP] was intended to prevent accusations that key personnel involved in procurement influenced the outcome of these investigations. The decision was not linked to your performance or conduct, neither of which are being pre-judged.

29. On 14 August 2006, Mr. Malloch Brown advised the Applicant that his SLWFP was being lifted and that on the basis of the PTF findings, he would be charged with misconduct. He was then charged with misconduct on 15 August 2006 for lack of management oversight. On 6 September 2006, the PTF issued a revised investigation report concerning the allegations against the Applicant and on 14 September 2006, the Respondent issued a revised set of allegations. The Applicant submitted comments and supporting documentation in response to the charges on 13 October 2006.

30. On 16 January 2007, Ms. Jane Holl Lute, the then Assistant Secretary-General, DPKO, wrote to the Applicant advising that as a result of a further review, “the Organization has concluded that you have provided a satisfactory explanation of your conduct [...]. Accordingly, it has been decided that these matters should not be pursued further”. The letter also contained a reprimand for his failing to exercise the necessary level of management oversight. Additionally, Ms. Holl Lute informed the Applicant that he would not be returned to his assignment in UNMIS but would be placed in another position commensurate with his qualifications and the Organization’s needs.

31. On 22 January 2007, Ms. Holl Lute advised the Applicant that, on the instruction of the Secretary-General, the reprimand was being withdrawn and removed from his file.



## **The issues**

32. Based on the parties pleadings and subsequent submissions<sup>3</sup>, the Tribunal deems the following to be the issues for determination:

- a. Whether the imposition of SLWFP was justified;
- b. Whether the Applicant's due process rights were respected;
- c. Whether the Applicant's placement on SLWFP damaged his reputation; and
- d. Whether the Applicant is entitled to compensation.

33. At the time the Application was filed, the issues of reprimand and transfer of the Applicant from UNMIS had not been resolved. The Tribunal notes that these issues have been judicially determined<sup>4</sup> following a referral to the Joint Disciplinary Committee (JDC) in December 2007. In its report of February 2009, the JDC recommended that the administrative reprimand be reinstated.

34. The Applicant challenged that decision before the United Nations Dispute Tribunal (UNDT) in New York. Judge Memooda Ebrahim-Carstens, who heard the case, found that the decision to withdraw the reprimand and refer the matter to the JDC for advice was a breach of the Applicant's terms of appointment but that the initial imposition of the reprimand was not an improper exercise of the Secretary-General's discretion<sup>5</sup>. The Judge also found that the wording of the reprimand was inappropriate. She also found that the decision to transfer the Applicant from his functions at UNMIS was a disguised disciplinary measure and was in breach of the Applicant's terms of appointment. The learned Judge awarded the Applicant USD30,000 as moral damages but declined to award him any compensation for pecuniary loss. That decision was confirmed on appeal by the United Nations Appeals Tribunal (the Appeals Tribunal) in Judgment No.

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<sup>3</sup> Parties' joint submission in response to Order No. 132 (NBI/2010) dated 30 August 2010.

<sup>4</sup> See *Goodwin* UNDT/2011/104.

<sup>5</sup> *Id.*

2013-UNAT-346. This Tribunal refers to it for the purposes of pointing out that the issues of reprimand and transfer are now *res judicata*.

35. The Tribunal therefore considers that the only issues remaining to be determined are whether the Applicant should have been put on SLWFP and whether his due process rights were respected.

### **Applicant's submissions**

36. The Applicant submits the following:

- a. The facts indicate that a routine investigation was being carried out and there was no clear rationale or exceptional circumstances for the decision to place him and seven other staff members on SLWFP pursuant to former staff rule 105.2(a)(i).
- b. The Respondent did not articulate clearly the exceptional circumstances that could justify his being placed on SLWFP.
- c. The decision to place him on SLWFP was arbitrary and capricious in that no informed reasons were provided for such an action.
- d. His placement on SLWFP was, in effect, a *de facto* suspension from service and a disguised disciplinary measure without any of the procedural safeguards associated with that measure and was widely disseminated in the media thereby failing to preserve the confidentiality of the investigation.
- e. The decision of the Respondent not to follow the JAB recommendations constitutes discriminatory treatment on the ground that the Respondent has not justified why he accepted the recommendations for payment of compensation to some of the eight staff members and rejected the recommendations of compensation in his case.
- f. The Applicant has suffered public humiliation, damage to his reputation and his career, as well as physical injury.

### **Respondent's submissions**

37. The Respondent submits as follows:

a. The Secretary-General, as Chief Administrative Officer of the Organization, is vested with broad authority over the placement of staff members. Indeed staff rule 1.2(c) provides in relevant part that “[s]taff members are subject to the authority of the Secretary-General and to assignment by him to any of the activities or offices of the United Nations”. Accordingly, it is well within the discretionary authority of the Secretary-General to direct the placement of staff members as required.

b. Pursuant to staff regulation 5.2, “[s]pecial leave may be authorised by the Secretary-General in exceptional circumstances”, that is, to avoid the contamination of evidence, or the appearance of such contamination.

c. Former staff rule 105.2(a)(i) provides, in relevant part, that “[i]n exceptional cases, the Secretary-General may, at his initiative, place a staff member on special leave with full pay if he considers such leave to be in the interest of the Organization”.

d. The Secretary-General had authority to place the Applicant on SLWFP, since the circumstances in which the Applicant and the Respondent found themselves were unprecedented and presented an exceptional case. The irregularities and allegations contained in the OIOS Report and Deloitte Report created an unprecedented and extraordinary situation and, further, such placement was considered by the Secretary-General within his discretion and his broad authority, to be in the interest of the Organization. Thus, the decision to place the Applicant on SLWFP in this case fell squarely within the parameters of former staff rule 105.2(a)(i).

e. In the period immediately prior to the events to which this Application relates, the report of the Independent Inquiry Committee into the United Nations Oil for Food Programme had exposed major

shortcomings in the Organization's procurement activities, which had resulted in serious damage to the reputation of the United Nations. Further, the Draft OIOS Report concerning procurement activities in the United Nations and the Deloitte Report provided evidence of additional irregularities which merited further investigation by the Organization. In such circumstances, it was imperative for the Respondent to take every appropriate action to ensure that such matters were properly investigated and addressed.

f. The placement of the Applicant on SLWFP was not a disciplinary measure as was articulated in the letter of 16 January 2006 from Mr. Mark Malloch Brown, the then Chef de Cabinet, to the Applicant, in which it was explained that the decision to place him on SLWFP was "in the best interest of the Organization" and was a "purely administrative measure, which [was] not disciplinary in nature and [was] taken to assist the Organization in conducting a full assessment of the situation". In addition, the Respondent notes the Letter to Staff on Procurement Activities broadcast on 30 January 2006, in which the Secretary-General states with respect to the placement of certain staff, including the Applicant, on SLWFP "[l]et me stress that...this was not a disciplinary action, nor was it meant to prejudge anyone's conduct. Rather, this step was necessary to protect the Organization's interests and better establish the facts".

g. On the issue of discriminatory treatment the Respondent submits that the cases of the staff members placed on SLWFP were considered by the Secretary-General on a case-by-case basis, taking account of their differing positions and circumstances, and that they were considered on their merits. All such decisions by the Respondent were fully within his discretionary authority.

h. The Organization was required to ensure that the investigation was fair and proper. The Applicant was therefore placed on SLWFP to enable such investigation to proceed without possible interference to ensure that it

was conducted fairly and correctly and in the interests of the Organization, and that it would be conducted in a manner that would protect the Applicant's rights and reputation during the investigation. In this regard, the Applicant was notified on numerous occasions that the decision was taken in order to enable a full investigation of matters and, further, to “prevent accusations that key personnel involved in procurement influenced the outcome of these investigations”.

i. The Respondent cannot be held accountable for the unauthorised release of such information and, therefore, the alleged adverse publicity to which the Applicant refers.

j. Whilst the Applicant alleges that his professional reputation has been damaged, he has provided no evidence in this regard. Accordingly, the Applicant's contention appears to be based on mere speculation. The Respondent notes in this regard that in official statements to the press, the Administration in fact took every precaution to ensure that the Applicant's reputation was protected.

### **Considerations**

#### **Did former staff rule 105.2(a)(i) empower the Respondent to place the Applicant on SLWFP?**

38. Former staff rule 105.2(a)(i), found under the Chapter “Annual and Special Leave”, sets out two ways in which a staff member may be put on special leave. It provides:

Special leave may be granted at the request of a staff member for advanced study or research in the interest of the United Nations, in cases of extended illness, for child care or for other important reasons for such period as the Secretary-General may prescribe. In exceptional cases, the Secretary-General may, at his or her initiative, place a staff member on special leave with full pay if he considers such leave to be in the interest of the Organization;

39. The first situation covers the case of a staff member who himself or herself makes a request to be placed on special leave on one of the stated grounds, while the second situation covers the cases where the initiative comes from the Secretary-General in “exceptional cases”.

What constitutes an “exceptional case”?

40. There are no guidelines on what is to be understood by the term “exceptional cases”. Whether the term includes the circumstances of the present case is a matter of statutory interpretation. A key rule of statutory interpretation is that words of general meaning should be read in light of the context in which they appear, rather than in isolation. In this regard, Viscount Simonds in the case of *Attorney General v Prince Ernest Augustus of Hanover*<sup>6</sup> observed:

[W]ords, and particularly general words, cannot be read in isolation: their colour and content are derived from their context. So it is that I conceive it to be my right and duty to examine every word of a statute in its context, and I use "context" in its widest sense, which I have already indicated as including not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes *in pari materia*, and the mischief which I can, by those and other legitimate means, discern the statute was intended to remedy.

41. The Tribunal holds that former staff rule 105.2(a)(i) should be read not in isolation but as a whole together with the other provisions of the Staff Regulations. Interpretation of the phrase “exceptional cases” is also informed by the content of former staff rule 105.2(a)(i) itself.

42. The power given to the Secretary-General by the words “exceptional cases” is not unlimited and cannot be used in any type of situation at the discretion of the Secretary-General. The inclusion of that broad power conferred on the Secretary-General by the general words “exceptional cases” must be taken to have been inserted to cover situations which ought to have been included among the instances covered in the first part of the former staff rule but which may have been omitted or not provided for. In no circumstances can that power

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<sup>6</sup> (1957)AC

given to the Secretary-General be used in an unbridled way and outside the context of the Staff Regulations.

43. In *Kamunyi* UNDT/2010/214, Shaw J. concluded that the words “exceptional cases” relate to:

[...] situations referred to earlier in the clause such as where the staff member is undertaking research that will benefit the United Nations, or where a valuable staff member is unable to perform his or her duties by reason of illness or child care obligations. It is not a catch-all which extends to Chapter X disciplinary measures. That Chapter has its own provisions for suspension.

44. From the case law there are two examples where the former United Nations Administrative Tribunal has made some observations on the kinds of exceptional cases that may warrant the placement of a staff member on SLWFP. In the case of *Makil*<sup>7</sup>, the former Administrative Tribunal considered that a staff member, occupying the position of Deputy Executive Director, ITC, at the D-2 Level, who was not properly supporting or progressing the implementation of certain organizational reforms and whose divergent views with the Executive Director made it difficult for team work, was properly placed on SLWFP for a period of just six months before the date of his retirement under former staff rule 105.2(a)(i).

45. In the matter of *Kamoun*<sup>8</sup> the former Administrative Tribunal considered that “SLWFP is a measure used only in exceptional circumstances. It is normally used for short periods of time, for instance, until a new position is found for a staff member.” The former Administrative Tribunal further stated that “[s]uch a measure must never be adopted without ensuring that the rights of the staff member are guaranteed and should never amount to a veiled attempt to discipline a staff member without due process.”

46. The question of whether the term “exceptional cases” includes circumstances that were disciplinary in nature has been considered in *Johnson* UNDT/2011/123 and *Kamunyi*. In both cases it was found that former staff rule

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<sup>7</sup> UN Administrative Tribunal Judgment No. 1009, *Makil* (2001)

<sup>8</sup> UN Administrative Tribunal Judgment No. 925, *Kamoun* (1999).

105.2(a)(i) did not permit placing a staff member on SLWFP where an investigation was being made into possible wrongdoing by that staff member. This Tribunal endorses the reasoning in *Johnson* that:

To use former staff rule 105.2 in such a manner would render the provisions of former Chapter X of the Staff Rules and ST/AI/371 meaningless, since the protections of former Chapter X and ST/AI/371 would not need to be respected when the more general former staff rule 105.2 could be relied upon.

47. Former Chapter X of the Staff Rules and ST/AI/371 contain an extensive regime to deal with instances of misconduct. It is not necessary to cite all relevant provisions here but the following suffice to show that distinct processes existed for suspending staff members during investigation and disciplinary proceedings at the time the Applicant was put on SLWFP.

48. Former staff rule 110.2 provided:

(a) If a charge of misconduct is made against a staff member and the Secretary-General so decides, the staff member may be suspended from duty during the investigation and pending completion of disciplinary proceedings for a period which should normally not exceed three months. Such suspension shall be with pay unless, in exceptional circumstances, the Secretary-General decides that suspension without pay is appropriate. The suspension shall be without prejudice to the rights of the staff member and shall not constitute a disciplinary measure.

(b) A staff member suspended pursuant to paragraph (a) shall be given a written statement of the reason for the suspension and its probable duration.

49. ST/AI/371 (Revised disciplinary measures and procedures) is also relevant for the present purposes. Section 2 provides that 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. Pursuant to section 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. Section 4 provides that:



If the conduct appears to be of such a nature and of such gravity that suspension may be warranted, the head of office or responsible official shall make a recommendation to that effect, giving reasons. As a general principle, suspension may be contemplated if the conduct in question might pose a danger to other staff members or to the Organization, or if there is a risk of evidence being destroyed or concealed and if redeployment is not feasible.

50. Section 6 of ST/AI/371 provides that:

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.

If the Secretary-General authorizes suspension, the staff member shall be informed of the reason for the suspension and its probable duration and shall surrender his or her grounds pass. A staff member on suspension may not enter United Nations premises without first requesting permission and shall be afforded the opportunity to enter, under escort, if necessary to prepare his or her defence or for any other valid reason.

51. The fact that separate regimes existed for dealing with staff member misconduct (former Chapter X of the Staff Rules and ST/AI/371), and the fact that former rule 105.2(a)(i) made no reference whatsoever to disciplinary matters, is a strong indication that “exceptional cases” do not include those relating to misconduct. The Tribunal therefore concludes, in agreement with the decisions of *Johnson* and *Kamunyi*, that former staff rule 105.2(a)(i) did not give the Administration the power to place a staff member on SLWFP when an investigation into possible wrongdoing by that staff member was ongoing.

52. Following on from this conclusion, the question is whether the actions taken in relation to the Applicant were disciplinary in nature and part of a broader investigation into misconduct. Even though letters were issued and statements made to the media that the measures taken in the case of the Applicant and the other staff members were not disciplinary in nature, it is not the words used by

different protagonists that matter but the real substance of the situation generated by the actions of the administration. From the facts, it is reasonable to infer that the guiding reason to place the Applicant and the seven other staff members on SLWFP was the discovery of instances of “fraud, abuse and waste”, words used by the then Secretary-General in his broadcast email to the staff members of the Organization.

53. There is ample evidence that the underlying rationale behind the placement of the eight staff members on SLWFP related to misconduct. This includes the following:

a. The Associated Press released a story on 16 January 2006 on the eight staff members being placed on SLWFP pending completion of an investigation into fraud and mismanagement in purchasing for United Nations peacekeeping.

b. In his letter of 16 January 2006 Mr. Mark Malloch Brown, then Chef de Cabinet, informed the Applicant of an “ongoing audit and investigation into the Organization's procurement activities”.

c. When the Applicant and the seven other staff members were placed on SLWFP an investigation into “possible fraud, abuse and waste” was ongoing according to the then Secretary-General in his email broadcast dated 30 January 2006.

d. On 22 February 2006 the then Chef de Cabinet, Mr. Malloch Brown, gave a briefing to the Security Council in which he indicated that eight staff members had been placed on SLWFP as a “precautionary measure to protect the Organization” while the issues raised by the audit were looked into more fully. He went on to explain that the Secretariat was looking carefully into the situation of each of the eight staff members and that for some, “the investigatory arm of OIOS was undertaking an accelerated review within a broader investigation of other allegations of possible procurement-related wrongdoing by staff”.

e. Ms. Adele Grant stated in her letter dated 17 April 2006 addressed to the Applicant that placing him on SLWFP was “subject to a number of fact-finding investigations within the Organization, as well as investigations by national bodies”.

f. In a letter dated 15 August 2006 addressed to the Applicant by Ms. Georgette Miller, the Director of the Division for Organisational Development, OHRM, attention was drawn to the PTF report dated 4 August 2006 in regard to a number of allegations of improper conduct in connection with his role in certain procurement exercises.

g. In its revised report dated 6 September 2006 the PTF concluded that the Applicant was derelict in his managerial responsibilities as Chief of Aviation, UNMIS and failed to exercise sound and prudent oversight of his Section.

h. At the time that the Applicant and the seven other staff members were put on SLWFP the Administration was in possession of the following:

- i. The draft reports of the OIOS Internal Audit Division carried out during 2003 to 2004 on certain “fraud indicators” in peacekeeping missions, namely draft internal Audit Report AN2003/42/1 titled “Audit of Systems Contract for Engineering Manpower to Peacekeeping Missions” (“2003 Draft Report”) and draft internal Audit Report AP2004/600/14 titled “Review of selected peacekeeping procurement cases—analysis of patterns of fraud indicators” (“2004 Draft Report”).
- ii. The General Assembly Resolution 59/296 requesting OIOS to conduct a comprehensive management audit of the Department of Peacekeeping Operations.
- iii. The Deloitte Report on “Assessment of Internal Controls in the United Nations Secretariat Procurement Operations”.

iv. The December 2005 OIOS draft internal Audit Report AP2005/600/20 titled “Comprehensive Management Audit of the Department of Peacekeeping Operations—Procurement”. This draft Report mentioned the name of the Applicant as well as other names as having been linked to several procurement cases.

i. The reply of the Respondent also makes clear that the placing of the Applicant on SLWFP was not a purely administrative measure but part of a broader investigation into misconduct within the Organization. This is what the Respondent submits:

*[O]nce the possibility of corruption and fraud in the procurement activities of the United Nations had been identified, the Organization was obliged to investigate the matter fully, especially with regard to those staff members, including the Applicant, who were potentially associated with such possible irregularities, and to take all necessary action in that regard. The Respondent further submits that the Organization was required to ensure that the investigation was fair and proper. The Applicant was therefore placed on SLWFP to enable such investigation to proceed without possible interference to ensure that it was conducted fairly and correctly and in the interests of the Organization, and that it would be conducted in a manner that would protect the Applicant's rights and reputation during the investigation [emphasis added].*

54. The above quoted facts show clearly that the suspension of the Applicant along with other staff members took place in the context of an investigation into suspected irregularities in procurement. As such, the suspension cannot be justified under former staff rule 105.2(a)(i). To hold otherwise would make mockery of and render null and void the provisions that deal with investigations.

55. The Respondent's position is that although the action looks like a suspension from service, it is not really a suspension from service because it was called by another name. But to the Tribunal it effectively amounted to a suspension from service pursuant to former staff rule 110.2 and section 6 of ST/AI/371. Indeed, the PTF even referred to the Applicant's condition as a

suspension and it was reported as such in the press. Public affirmations that it was an administrative rather than a disciplinary action only serve to underscore the evident disciplinary implications it carried; if the action was truly administrative in nature, such affirmations would have been unnecessary. Accordingly, it is established that the suspension of the Applicant was for an investigation into a case involving a disciplinary matter and as such, the application of the Secretary-General's discretion under staff rule 105.2 was a breach of the Staff Rules.

56. The Tribunal concludes therefore that former staff rule 105.2(a)(i) did not empower the Respondent to place the Applicant on SLWFP in the context of an investigation into alleged wrongdoing.

**Did the decision to place the Applicant on SLWFP violate his due process rights?**

57. The Applicant submits that his due process rights were not respected due to the following<sup>9</sup>:

- a. He was not provided the opportunity to comment on the draft OIOS report prior to his suspension even though it was widely circulated;
- b. The Respondent failed to follow proper procedures for notifying staff of allegations against them in that he learned about the extent of the investigation through the media;
- c. He was never advised that he was the target of an inquiry or allowed counsel; and
- d. OIOS reported the case as fact to the General Assembly before the investigation process was completed and had to issue a corrected report because of the errors it contained.

58. Former staff rule 110.4 set out the due process rights of a staff member in relation to alleged misconduct:

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<sup>9</sup> The Applicant's Written Observations on the Respondent's Answer dated 28 December 2009.

(a) No disciplinary proceedings may be instituted against a staff member unless he or she has been notified of the allegations against him or her, as well as of the right to seek the assistance in his or her defence of another staff member or retired staff member, and has been given a reasonable opportunity to respond to those allegations.

(b) No staff member shall be subject to disciplinary measures until the matter has been referred to a Joint Disciplinary Committee for advice as to what measures, if any, are appropriate....

59. Should the due process rights set out in staff rule 110.4 and section 6 of ST/AI/371 have been complied with in the case of the Applicant?

60. The Tribunal has previously concluded that although the Applicant was placed on SLWFP by the Respondent, he was in actual fact suspended from service within the meaning of former staff rule 110.2 and section 6 of ST/AI/371. The scope of the discretionary authority conferred on the Secretary-General to suspend staff members is clearly delineated by the criteria set out in sections 6(a) to (c) of ST/AI/371. Thus, the Respondent should not have indulged in the business of picking and choosing which parts of section 6 to apply and which parts to overlook. The provision on suspension should not have been applied by the Respondent in isolation but should have been applied in conjunction with the due process rights set out in staff rule 110.4 and section 6 of ST/AI/371.

61. Consequently, the end result was that on one hand the Respondent treated the Applicant like a staff member who had already been charged with misconduct by suspending him but on the other hand erroneously denied him the due process protections enshrined in former staff rule 110.4 under the ruse that he had not, in fact, been charged with misconduct and was still at the preliminary investigation phase.

62. This Tribunal is cognizant of the rulings of the Appeals Tribunal in relation to the provisions of ST/AT/371. In *Applicant* 2012-UNAT-209 the Appeals Tribunal held generally that ST/AI/371 and former staff rule 110.4 apply once the disciplinary proceedings have been initiated and in *Applicant* 2013-UNAT-280 the Appeals Tribunal held specifically that paragraph 6(a) of ST/AI/371 is applicable to the stage at which the Administration had decided to charge the staff member with misconduct.

63. Additionally, in *Powell* 2013-UNAT-295 and in *Applicant* 2012-UNAT-209, the Appeals Tribunal clearly laid down that the due process rights provided in former staff rule 110.4 and ST/AI/371 cannot apply during the preliminary investigation because they would “hinder” the investigation. Regrettably, the Appeals Tribunal did not elaborate on how such hindrance may occur.

64. The present matter, however, can be distinguished from the aforementioned Appeals Tribunal jurisprudence due to its unique circumstances. In *Powell*<sup>10</sup>, the Applicant was suspended after the preliminary investigations had been completed and he had been charged with misconduct by the Office of Human Resources Management (OHRM). The Respondent did not mix apples and oranges by suspending the Applicant during the conduct of the preliminary investigation. In the current case, the Respondent’s decision to suspend the Applicant effectively placed the matter outside the realm of a preliminary investigation and brought it into the ambit of a matter that was well founded and therefore to be pursued.

65. In *Applicant* 2013-UNAT-280<sup>11</sup> the staff member was summarily dismissed after a preliminary investigation had been conducted, he was charged with misconduct by OHRM and his case had been reviewed by a JDC. He was not suspended during the pendency of the preliminary investigation.

66. Lastly, in *Applicant* UNDT/2011/054<sup>12</sup> the Dispute Tribunal did not discuss or rule on the legality of the Applicant’s suspension during the pendency of the preliminary investigation even though the Applicant was placed on suspension prior to charges of misconduct being laid against him. Thus, in this Tribunal’s humble opinion, the precise issue of the due process rights to be afforded an applicant placed on suspension pursuant to section 6 of ST/AI/371 but outside the margins of formal disciplinary proceedings has yet to be ruled on by the Appeals Tribunal.

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<sup>10</sup> See UNDT/2012/039.

<sup>11</sup> UNDT/2011/106.

<sup>12</sup> 2012-UNAT-209.

67. Additionally, in *Powell*<sup>13</sup> the Appeals Tribunal stated that during the preliminary investigations “only limited due process rights apply”. In view of the fact that no elaboration was provided, this Tribunal will presume that what the Appeals Tribunal meant is that these limited due process rights are those embodied in the guidelines formulated for investigators in the OIOS “Manual of Investigation Practices and Policies” (the Manual)<sup>14</sup>.

68. The Manual encompasses a number of provisions on the conduct of investigations. Paragraph 12 highlights the fact finding nature of an OIOS investigation by enunciating that the role of ID/OIOS is to establish facts and make recommendations in the light of its findings.

69. Paragraph 50 deals more specifically with the rights of a staff member under investigation. These rights are that: (i) a staff member is to be given a reasonable opportunity to present his/her version of the facts and to present evidence or witnesses; (ii) the staff member must be made aware of the allegations; and (iii) the staff member may be questioned further to explain inconsistencies between his/her version and that of witnesses.

70. The Manual also dictates that prior to the finalisation of the report the staff member must be made aware of the scope of the possible misconduct and be given an opportunity to explain why his/her action was proper and to present further evidence or witnesses.<sup>15</sup>

71. The record reveals that during the conduct of the OIOS investigation between September and December 2005, the Applicant was not informed of the allegations against him nor was he given a reasonable opportunity to present his version of the facts, evidence or witnesses. On 10 January 2006, he was recalled to United Nations Headquarters in New York and on 16 January 2006, he was placed on SLWFP without any specific information on the nature of the allegations against him. The only reason provided, which was of a general nature,

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<sup>13</sup> 2013-UNAT-295.

<sup>14</sup> The Manual that is relevant to the present case was prepared on 4 April 2005 under the hands of the then Under-Secretary-General of OIOS, Mr. Dileep Nair.

<sup>15</sup> Paragraphs 52 & 53 of the Manual



consisted in telling him that he was being placed on SLWFP “in view of the ongoing audit and investigation into the Organization’s procurement activities”.

72. Prior to his being placed on SLWFP, the Applicant was provided a copy of the Draft OIOS Report and he submitted comments. But this did not amount to the Applicant being informed of the allegations against him. He was merely being informed of findings made without compliance with the basic procedural requirements. The Tribunal notes also the Applicant’s contention that his comments were not included in the formal DPKO reply to the draft Report. This leads the Tribunal to infer that although the Applicant was given the opportunity to respond, his response was not presented to OIOS and therefore not taken into consideration by the OIOS investigators prior to finalization of their report on 19 January 2006.

73. In view of the foregoing, the Tribunal concludes that the decision to place the Applicant on SLWFP violated his due process rights.

**Did the decision to place the Applicant on SLWFP damage his reputation?**

*Parties’ submissions*

74. The Applicant asserts that his placement on SLWFP coupled with the publicity adversely affected his reputation and standing in the international community as well as within his professional field. He submits that prior to his placement on SLWFP, he had been placed in a P-5 level post although he was a P-4 and that this would have automatically led to his eventual promotion to the P-5 level a few months later by ratification. However, when the SLWFP finally ended, he was not restored to the same post or to any P-5 post.

75. The Respondent asserts that the Applicant suffered no harm because: (i) the Organization took every precaution to ensure that his reputation was protected; (ii) the Applicant has not provided any evidence that his professional reputation has been damaged; and (iii) the Applicant was exonerated as a result of the subsequent investigation. Additionally, the Respondent submits that the Organization cannot be held accountable for the unauthorized release of the

Applicant's information nor for the alleged adverse publicity because his name was released into the public domain not as a result of an official statement of the Organization but rather due to an unauthorised leak.

*Considerations*

76. The record shows that the investigations into the procurement irregularities that were besetting the peacekeeping operations were well documented by external media (Fox News, the Associated Press and the Washington Post) on 16, 19 and 24 January 2006 and on the United Nations intranet on 30 January and 9 February 2006. The Applicant's placement on SLWFP, which was also well documented by the external and internal media sources, was reported in such a way as to allow a reasonable person to make a logical inference that he had been removed from his post because he was deeply entangled in the procurement misdeeds.

77. In this respect, the Tribunal takes particular note of the language used in the various news reports:

a. The first sentence of the 16 January 2006 Fox News was: "The United Nations suspended eight officials **as part** (emphasis added) of an ongoing investigation of the Organization's procurement and peacekeeping departments".

b. On 19 January 2006, the Associated Press ran an article that quoted United States Ambassador John Bolton as saying "the United Nations took an "unprecedented step" in putting eight staff members on paid leave **while it completes an investigation into fraud and mismanagement** in purchasing for United Nations peacekeeping operations" (emphasis added). The article went on to report that the then United Nations spokesman, Mr. Stéphane Dujarric, said "the eight staff members were put on paid leave **as a result** of an internal U.N. audit of the peacekeeping department's management and procurement practices" (emphasis added).

c. On 24 January 2006, the Washington Post reported that:

An internal U.N. probe of the department that runs international peacekeeping operations **has uncovered extensive evidence of mismanagement and possible fraud, and triggered the suspension of eight procurement officials** pending an investigation [...] (emphasis added).

In a letter to staff on procurement activities broadcast on 30 January 2006, the then Secretary-General, Mr. Kofi Annan, stated:

Last June, the General Assembly requested a comprehensive management audit of the Department of Peacekeeping Operations. From September to December, the Office of Internal Oversight Services performed the procurement portion of that review. **Its report documents various instances of non-compliance with procurement rules, and indicates that more serious wrongdoing may have occurred as well** (emphasis added). Senior management is now looking into the issues raised by the report. **OIOS is also investigating a number of cases of possible fraud, abuse and waste that were identified both in this audit and in other complaints** (emphasis added).

.....

**In response to the findings of the OIOS report, eight staff members in positions related to procurement then or now have been placed on special leave with full pay** (emphasis added). There is understandable unease among many colleagues about this step. Let me stress that this was an administrative undertaking, and reflects a range of different shortcomings and apparent behaviours. It was not a disciplinary action, nor was it meant to prejudice anyone's conduct. Rather, this step was necessary to protect the Organization's interests and to allow us to better establish the facts. We are still at the early stages of this process. Before we draw any conclusions, we must get to the bottom of what has happened, quickly and thoroughly, with full respect for the due process rights of staff members.

d. On 9 February 2006, an article was posted on the United Nations intranet summarizing a briefing Mr. Malloch Brown had provided on the procurement investigation. In connection to the staff placed on SLWFP, Mr. Malloch Brown stated that **“this measure was taken in response to the serious findings”** (emphasis added) contained in an OIOS audit report on procurement in peacekeeping, including questions of mismanagement and some suspicions of significant wrongdoing.

e. On 22 February 2006, Mr. Malloch Brown gave a briefing to the Security Council in which he indicated that eight staff members had been

placed on SLWFP as a “precautionary measure to protect the Organization” while the issues raised by the audit were looked into more fully.

78. It is also noteworthy that the Applicant’s name and employment details were released by anonymous United Nations officials to the Associated Press and included in its article, which was published three days after he had been placed on SLWFP by the Administration.

79. Even though the then Under-Secretary-General for Management, Mr. Christopher Burnham, and Mr. Malloch Brown subsequently announced that the decision to suspend the Applicant and the other seven staff members did not represent a finding that they had done anything wrong, there is no evidence in the record evincing that the Organization: (i) put any measures in place to protect the Applicant’s reputation; or (ii) made any effort to identify and chastise the anonymous United Nations officials who leaked the information; or (iii) at a bare minimum, protested the leakage of the staff members’ personal details.

80. Did all of the external and internal coverage highlighted above adversely affect the Applicant’s reputation?

81. The Tribunal is of the considered view that once words like “fraud”, “mismanagement”, “abuse”, “waste” and “serious wrongdoing” were employed by prominent people such as Ambassador Bolton, Mr. Annan and Mr. Malloch Brown after the names of the Applicant and the other seven staff members had been released by the Associated Press, a perception<sup>16</sup> was created, within and outside of the United Nations, that these staff members had been placed on SLWFP due to wrongdoing. Unfortunately, since the PTF investigation report was not concluded until April 2006, the Applicant ended up being tried, wittingly or unwittingly, in the court of public opinion based on the initial findings of a preliminary audit investigation.

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<sup>16</sup> This includes knowledge of the actual circumstances and an erroneous but reasonable belief in the existence of nonexistent circumstances. See Bryan A. Garner, *Black’s Law Dictionary* (West Publishing Company, 2004), p. 1172.

82. To this end, the Tribunal endorses the JAB's finding that:

In all, the handling of the case in the internal and external media shows that, in the efforts to bolster perceptions as to the Organization's commitment to stamp out corruption, the Administration created a perception that [the Applicant] was involved in or at least associated with that corruption [...]. No amount of reassurance by the Administration that this measure was not in fact linked to his performance or conduct could mitigate or avoid the perception created that he was considered a threat that required exceptional measures in administering him.

The Panel agrees that it is a practical impossibility to avoid all press leaks. However, the Panel would consider that, if the Administration thought there to be exceptional circumstances requiring SLWFP to protect the Organization's reputation, an appropriate balancing would call for exceptional procedures to safeguard information that, if released, might adversely affect reputations of staff members [...]. Thus, while the Organization might not be held accountable for the appearance of [the Applicant's] name in the media, the unnamed U.N. officials responsible were agents of the United Nations; the lack of any apparent efforts to protect his reputation – beyond blanket statements that the measure was not disciplinary but “more” administrative in nature – materially contributed to the damage thereto. In this regard, the Panel notes that such measures are necessary *precisely because*, once staff are placed on special leave, the Organization will have limited control over how information is digested in the media, and over limiting the damage caused to [the Applicant].

83. Accordingly, this Tribunal holds that the intense media coverage adversely impacted the Applicant's reputation because the public nature of the Organization's statements and the external media reports resulted in the Applicant being associated with fraud, abuse, mismanagement and other serious wrongdoing and as a result of this association, his career suffered palpably. The record shows that he was not restored to the post of UNMIS Chief Aviation Officer at the P-5 level even after the Respondent decided not to pursue disciplinary proceedings against him.

84. The Tribunal rejects the Respondent submission that the Applicant suffered no harm because he was exonerated by the subsequent PTF investigation. This was a very hollow victory indeed in light of the fact that there is no evidence

in the record showing that the Applicant's exoneration was acclaimed as loudly and publicly in the external and internal United Nations media sources as was the pronouncement of his suspension in response to the findings of the OIOS report. In the absence of any public dissemination, the Tribunal finds it hard to accept that the Applicant's subsequent exoneration mitigated and/or eliminated the damage to his reputation. Unfortunately, disabusing people of negative perceptions is not a task that can be achieved by silence when the erroneous facts were loudly proclaimed.

### **Compensation**

85. The principles that govern the award of compensation have been discussed in a number of cases by the Appeals Tribunal and have been summarised by Judge Marilyn Kaman in *Johnson*:

Under the judgment of the United Nations Appeals Tribunal in *Antaki 2010-UNAT-096*, the Dispute Tribunal has the unquestioned discretion and authority to quantify and order compensation under art. 10.5 of its Statute for violation of the legal rights of a staff member, as provided under the Staff Regulations, Staff Rules, and administrative issuances.

Compensation may be awarded for actual pecuniary or economic loss, non-pecuniary damage; procedural violations, stress, and moral injury (see *Wu 2010-UNAT-042*).

The very purpose of compensation is to place the staff member in the same position s/he would have been in, had the Organization complied with its contractual obligations (*Warren 2010-UNAT-059*, *Iannelli 2010-UNAT-093*).

86. Kaman J. also summarised the principles governing the award of moral damages:

The United Nations Appeals Tribunal has held in *Wu* that, "It is not disputed that compensation may be awarded for non-pecuniary damage" and that while not every violation of due process rights will necessarily lead to an award of compensation, damage in the form of "neglect and emotional stress" may be compensated and does not amount to an award of punitive or exemplary damages (see *Wu*, para. 33).

The Tribunal observes that, under well-established case-law from the former United Nations Administrative Tribunal, moral damages were awarded “where a subjective right that affects the victim’s sensitivity and feelings is infringed” (see Judgment No. 920, Lefebvre (1999), para. IV).

87. The Learned Judge also referred to the case of *Makil* (*supra*) where it was held:

that nominal damages might be an appropriate measure of compensation where a “mere technical breach of a right” has occurred and where no actual damage has been inflicted, but held that “a more appropriate measure of compensation in relation to the Applicant’s claim under this heading [was] necessary”;

88. She also referred to the case of *Bangoura*<sup>17</sup> which involved the dissemination of information by a United Nations spokesperson that had not been verified or corroborated and which caused injury to the staff member’s reputation. In that case, the former Administrative Tribunal said:

The Tribunal is concerned that the Spokesman for the executive head of the United Nations should thus disseminate information that has not been verified and that, moreover, is later not corroborated, about a staff member of the United Nations whose reputation is permanently affected as a result, with all the serious consequences that this entails.

89. Similarly in the former Administrative Tribunal’s case of *Van Der Graaf*<sup>18</sup>, moral damages were granted for the humiliation brought upon the Applicant, which was considered disproportionate and unnecessary, especially where a press release contained the Applicant’s name. The judgment, *inter alia*, found as follows:

A letter informing the Applicant of his suspension without pay was delivered by four staff members, and he was escorted from the Vienna International Center by four UN security officers. Additionally, an official statement was issued to the major Austrian daily newspaper on the Applicant’s suspension, identifying characteristics and details of the case, including allegations of homosexuality and sexual harassment. This was followed by a

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<sup>17</sup> UN Administrative Tribunal Judgment No. 1029, *Bangoura* (2001)

<sup>18</sup> UN Administrative Tribunal Judgment No. 997, *Van Der Graaf* (2001)

press release containing the Applicant's name, nationality and status, and details regarding the allegations against him.

The Tribunal finds this conduct unreasonably insensitive and public. Both the humiliation that resulted from the manner in which the Applicant was escorted from his office and the publication of the allegations against him were unnecessary and inappropriate.

90. The Tribunal holds that the Applicant is entitled to compensation for the following reasons:

- a. The Respondent made a wrong application of section 105.2(a)(i);
- b. The decision of the Respondent to place the Applicant on SLWFP was a veiled disciplinary suspension;
- c. The Respondent could not justify the placement of the Applicant on SLWFP;
- d. By not taking any measures to protect the Applicant after his name was made public in the context of the investigation, the Organization effectively condoned the unauthorized and untimely dissemination of information that should have been confidential at least until the conclusion of the PTF investigation. The absence of protective measures resulted in damage to the Applicant's reputation and violated his rights.

91. For the above reason the Tribunal awards the Applicant the amount of two years' net base salary at the rate in effect on the date of the Applicant's placement on SLWFP.

92. The above amount shall be paid within 60 days of the date that this Judgment becomes executable. Interest will accrue on the above amount from the date of this Judgment at the current US Prime rate until payment. If the above amount is not paid within the 60 days period an additional five per cent shall be added to the US Prime Rate until the date of payment.



Case No. UNDT/NBI/2010/025/

UNAT/1674

Judgment No. UNDT/2013/111

*(Signed)*

Judge Vinod Boolell

Dated this 30<sup>th</sup> day of August 2013

Entered in the Register on this 30<sup>th</sup> day of August 2013

*(Signed)*

Abena Kwakye-Berko, Acting Registrar, Nairobi