



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2009/50  
Judgment No.: UNDT/2010/173  
Date: 28 September 2010  
Original: English

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**Before:** Judge Vinod Boolell  
**Registry:** Nairobi  
**Registrar:** Jean-Pelé Fomété

PARKES

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for applicant:**  
Edwin Nhliziyo

**Counsel for respondent:**  
Stephen Margetts, ALS/OHRM, UN Secretariat

## **Introduction**

1. Following an investigation related to fraud in the procurement activities of the United Nations Mission in the Democratic Republic of the Congo (MONUC), the Applicant, a Procurement Assistant, was informed by decision dated 11 January 2008, that he was being summarily dismissed for serious misconduct. The charges were based on the findings that he had solicited, received and accepted sums of money from a vendor who did business with MONUC, in violation of Staff Regulations 1.2 (b) (e) (f) (g) and (l) as well as the UN Financial Rules 5.12 and section 4.2 (1) and 4.2 (2) of the 2004 Procurement Manual.

2. The Applicant appealed the decision before the Joint Disciplinary Committee (JDC) whose recommendation was *inter alia* to rescind the decision and instead impose a written censure and a fine of USD 1,000. In a separate opinion, a member of the JDC further recommended that the Applicant be paid USD 1,000 for due process violations.

3. By decision dated 19 May 2009, the Secretary-General decided not to accept the JDC's recommendation and the decision to summarily dismiss the Applicant for serious misconduct was upheld (the Contested Decision).

4. In accordance with ST/SGB/2009/11 on Transitional measures related to the introduction of the new internal justice system, the Applicant referred his case to the United Nations Dispute Tribunal (UNDT) in Nairobi on 17 August 2009, by filing an application in which he moves the Tribunal to quash the contested decision and grant him compensation for moral damage.

## **Facts**

5. The Applicant joined the Organisation on 15 May 1979 and worked in various peacekeeping missions as a Field Service (FS) staff member throughout his career. In April 2000, he joined MONUC as a Procurement Assistant at the FS-4 level.

6. As a Procurement Assistant in MONUC, the Applicant was in charge of the procurement process in relation to UAC, S.P.R.L. (UAC), a local Congolese electronic and furniture store that conducted business with the Mission. Between 2001 and December 2006, MONUC issued fourteen purchase orders to UAC, in the total sum of approximately USD 195,000. The Applicant was listed as the buyer on three of these orders for a total value of USD 36,380.

7. On 2 August 2004, the Applicant bought musical equipment from UAC on an interest-free loan, amounting to USD 1,600.

8. Several months later, on 9 December 2004, the Applicant requested another interest-free loan in the sum of USD 800 from Mr. "X", a Sales Manager of UAC, in order to pay a deposit on an apartment.

9. The Applicant paid both loans back in full by instalment on 1 June 2006, 6 July 2006 and 27 July 2006.

10. In February 2007, the Procurement Task Force (PTF) of the United Nations Office of Internal Oversight Services (OIOS) began an investigation into MONUC's procurement activities.

11. On 8 May 2007, Mr. "X" was interviewed by the PTF with regards to his experience with MONUC's procurement process and his knowledge of any procurement irregularities. He recalled the USD 800 loan to the Applicant and his subsequent repayments.

12. On 10 May 2007, the Applicant was interviewed by the PTF in relation to various irregularities in MONUC's procurement section. When asked about the loan of USD 800 from the UAC Sales Manager and the purchase of musical equipment with UAC, the Applicant replied that "he did not consider it as a loan from a MONUC vendor, as it would not have been work related but purely private." Specifically, he stated to the investigators that "he always bought his musical equipment at UAC and that he bought his last music center there which he traded for

his old one". As for the loan of USD 800, the Applicant stated that "what he did was not with procurement in mind". He further stated that "[h]e was not able to get any more Mission Subsistence Allowance (MSA) advance and needed the money for the deposit" and that "he did not see a problem or a cause of conflict of interest since he did not ask for a return favour for one of UAC's contracts with MONUC" as "he [had] planned on paying UAC back".<sup>1</sup>

13. By email dated 20 June 2007, the PTF informed the Applicant of its interim finding that he improperly received money from a MONUC vendor, in violation of former Staff Regulation 1.2 (b), (e), (f), and (l) as well as Sections 4.2 (1) and (2) of the United Nations Procurement Manual of January 2004.

14. On 3 July 2007, the Applicant replied to the PTF that the UAC Sales Manager "[was] not a UN vendor but works for a UN vendor (...) it never occurred to [him] that asking for a favour from him would raise these questions".

15. On 6 July 2007, OIOS submitted the PTF's Interim Report to the Under-Secretary-General for Peacekeeping Operations. On 13 July 2007, the matter was referred to the Office of Human Resources Management (OHRM) of the UN Secretariat which again outlined the same allegations of misconduct in a letter to the Applicant dated 24 July 2007.

16. On 13 August 2007, the Applicant was suspended from duty with full pay. On 21 August 2007, the Applicant provided his comments to OHRM on the charges against him, following which, on 15 November 2007, the PTF submitted their observations on the Applicant's comments.

17. By letter dated 11 January 2008, OHRM informed the Applicant on behalf of the Secretary-General that he was summarily dismissed for serious misconduct on the ground that he had "solicited, received and accepted sums of money from a vendor who did or sought to do business with MONUC, in violation of staff regulations 1.2

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<sup>1</sup> PTF/OIOS Conversation Record dated 10 May 2007.

(b) (e) (f) (g) and (l), financial regulation 5.12 and section 4.2 (1) and 4.2 (2) of the Procurement Manual.” The dismissal became effective immediately upon the Applicant’s receipt of the letter.

### **Referral of the case to the Joint Disciplinary Committee**

18. On 11 February 2008, the Applicant submitted his case to the JDC pursuant to former staff rule 110.4 (c). A Panel was constituted on 15 December 2008, which unanimously concluded in a report dated 7 April 2009 that the factual basis presented to them was “insufficient to establish by a preponderance of evidence that [the Applicant] had engaged in patent misconduct.” At the same time, the Panel unanimously found that the “staff member violated the spirit of the rules insofar as he should have known that the loan could have been viewed as a conflict of interest”. In the light of their findings, the JDC recommended to the Secretary-General that:

- a. The decision to summarily dismiss the Applicant be rescinded;
- b. The staff member be issued a written censure by the Secretary-General and fined USD 1,000;
- c. The staff member be paid his salary and entitlements for the period between the date of his summary dismissal and 31 January 2009 when he would have reached the mandatory retirement age;
- d. That the staff member’s pension rights be restored and compensation be granted for any losses incurred in terms of his pension.
- e. He should be awarded USD 1,000 in compensation for lack of due process.

19. On 19 May 2009, the Secretary-General informed the Applicant that he did not accept any of the JDC findings and had decided to take no further action. The decision to summarily dismiss the Applicant for serious misconduct was upheld.

### **UNDT Proceedings**

20. The Applicant filed an application on 17 August 2009 with the UNDT, following which the Respondent filed his reply on 16 September 2009. On 23 September 2009, the Applicant submitted his comments to the Respondent's reply.

21. On 11 January 2010, the Tribunal provided the parties with pre-hearing guidelines and informed them that they had the option of calling witnesses. A hearing was subsequently held on 3 February 2010. The Applicant and his Counsel as well as Counsel for the Respondent participated in the hearing via audio-conference from New York, USA and Kingston, Jamaica. The parties did not call any witness.

### **Applicant's submissions**

22. In his application dated 17 August 2009, the Applicant submits that the Secretary-General's decision of 19 May 2009 to uphold his summary dismissal should be rescinded due to a lack of evidence and that the decision was vitiated by extraneous factors.

23. The Applicant avers that the Administration was misled as to the facts. The Applicant argues that he never solicited money from a UN vendor. He bought the musical equipment amounting to USD 1,600 without interest, on a credit purchase account, which is a common practice in Europe called "Crédit sans frais". He further submits that he was already a customer of UAC before he started handling the procurement file with this vendor. In his opinion, there is no evidence to suggest that the transaction was anything but a legitimate retail transaction on credit. As for the loan of USD 800, the Applicant emphasised that Mr. "X" loaned that money in his personal capacity. Mr. "X" was a friend and the Applicant paid him back the loan in full before the investigations started. Finally, the Applicant submits that UAC was not

a significant vendor for MONUC. It was a store that conducted more business with individual MONUC staff members than with MONUC itself. The Applicant argues that these are mitigating factors that were never considered by the investigators.

24. Furthermore, the Applicant submits that the decision to summarily dismiss him was based on extraneous factors. He argues that he was dismissed to allow PTF/OIOS to respond to widespread allegations of procurement abuses in the UN. He claims that this could explain, as pointed out by the JDC, the reason why the Secretary-General made his decision without first establishing the facts,

25. In the light of the foregoing, the Applicant asserts that while the Secretary-General has wide discretion in disciplinary matters, including the acceptance or rejection of the JDC recommendations, his discretion is not absolute. In rejecting the reasoned conclusions of the JDC, the Secretary-General violated most of the criteria laid down by the former United Nations Administrative Tribunal (UNAT) in Judgment No. 941 *Kiwanuka* that are binding on him. The Secretary-General's discretion should have respected the requirements of due process (UNAT Judgment No. 309, *Shields* (1983), No. 388, *Moser* (1987), and No. 515, *Khan* (1991) and his decision should have been reasoned (Judgment No. 203, *Sehgal* (1975)). The facts as established by the JDC did not amount to misconduct, still less serious misconduct; and even if the conflict of interest allegation were conceded, it cannot support the imposition of summary dismissal, which normally requires a serious misconduct charge. In his view, the disciplinary measure was clearly disproportionate, arbitrary and pre-determined.

26. In conclusion, the Applicant submits that the Respondent's decision to reject the recommendations of the JDC is indicative of a number of assumptions and conclusions that are unsupported by any logic, evidence or clear rationale. He has been deprived of a fair opportunity to defend himself, his employment and his reputation. The proceedings disregarded the law and as a result brought an end to his career, which had spanned over 29 years of service. His reputation has been forever

tarnished and he has suffered prolonged and needless stress from the ordeal to which he has been subjected.

27. In light of the foregoing, the Applicant requests the Tribunal to:
- a. Rescind the decision by the Secretary-General that serious misconduct occurred;
  - b. Order that the JDC recommendations be upheld;
  - c. Make accountable those who improperly investigated the case;
  - d. Award the Applicant five years' net base pay as compensation for the actual, consequential and moral damages he suffered as a result of the Respondent's actions;
  - e. Award the Applicant costs in the sum of USD 6, 500 in fees for legal representation.

**Respondent's submissions**

28. The Respondent provided a large number of exhibits in support of his written submissions dated 16 September 2009 and his oral pleadings of 3 February 2010.

29. The Respondent submits that, by decision dated 11 January 2008, the Applicant was summarily dismissed for serious misconduct, on the ground that he had solicited, received, and accepted sums of money from a private company that conducted business with MONUC and this was a clear conflict of interest given his position as Procurement Assistant. Specifically, the Applicant was dealing with UAC during the performance of his duties as Procurement Assistant. Yet, the Applicant solicited a loan of USD 800 in cash and a line of credit for musical equipment, involving USD 1,600, from UAC, a vendor doing business with MONUC.

30. Contrary to the Applicant's claims, the JDC made a number of adverse findings against the Applicant and the latter has not disputed these findings in his application. Precisely, the JDC found that the Applicant's solicitation of the loan gave rise to a "perception of conflict of interest and impropriety, compromising the integrity of the United Nations procurement processes and practices, and the image of the Organisation in the very country it was there to assist". In addition, the Panel found that, in the circumstances, his friend, as a Sales Manager of UAC, "had no alternative but to oblige the loan request". In the light of their findings, the JDC partially concluded in favour of the Applicant recommending that the disciplinary measure of summary dismissal be rescinded and instead that the Applicant be issued a written censure and fined USD 1,000. However, the Secretary-General informed the Applicant on 19 May 2009 that he did not accept the JDC's findings and maintained his decision to summarily dismiss him on the ground that the evidence on the record shows that the terms of the transaction for the musical equipment were "out of the ordinary" and that he solicited USD 800 from Mr. "X" in his capacity as Sales Manager of UAC.

31. The Respondent maintains that the statement of the UAC Sales Manager shows that the loan of USD 800 was between UAC and the Applicant, and not the sales manager in his personal capacity. Moreover, the ledger account shows that the loan was brought forward on the UAC account and that it was repaid by the Applicant to UAC, not to the Sales Manager in his private capacity; it also shows that the Applicant failed to repay any sum on the musical equipment purchased during the period 2 August 2004 to 1 June 2006; finally the Applicant failed to repay any sum on the USD 800 loan during the period 9 December 2004 to 1 June 2006. Accordingly, the Applicant enjoyed interest free credit from UAC and made no repayments for a period of at least 17 months.

32. The Respondent further submits that the terms and conditions of the loans were highly irregular, having been given "without condition". Although the sums paid to the Applicant were documented in the UAC ledger, there was no interest imposed and

the repayment terms were at the Applicant's convenience. In his statement to the investigators, the Sales Manager stated that "he begged [the Applicant] to repay" the money he owed to UAC and that "finally after a long time he paid it back". In the Respondent's view, the length of time taken for the Applicant to repay the sums suggests that during the year 2005 when no repayments were made at all, it was questionable whether the money borrowed by the Applicant was intended to be repaid at all.

33. With regards to the Applicant's allegations that due process was not respected, the Respondent submits that the Applicant was treated fairly during all stages of the investigation. The Applicant was afforded an opportunity to comment and present information and evidence to the OIOS report and on his record of interview. Finally, the Applicant was informed of his right to obtain legal counsel and was asked to respond to the charges and provide additional information.

34. In light of the foregoing, the Respondent submits that the facts underlying the charges have been properly established. The Applicant's involvement in procurement exercises with UAC was tainted by fraud and corruption. The findings made against the Applicant are supported by evidence. The established facts amount to serious misconduct and the disciplinary measure imposed on the Applicant was proportionate. The Respondent requests the Tribunal to reject this application in its entirety.

### **Considerations**

35. The Applicant was summarily dismissed by letter dated 11 January 2008 on the ground that he had "solicited, received and accepted sums of money from a vendor who did business with MONUC in violation of staff regulations 1.2 (b) (e) (f) (g) and (l) as well as the UN Financial Rules 5.12 and section 4.2 (1) and 4.2 (2) of the Procurement Manual.

36. When the JDC reviewed the Applicant's disciplinary case to advise the Secretary-General, it found that

“[the Applicant's] solicitation of a loan from an individual, albeit a friend, associated with a vendor with whom MONUC (and specifically [the Applicant], as a procurement officer in his official functions) did business could give rise to the perception of conflict of interest and impropriety, thus potentially compromising the integrity of the United Nations procurement processes and practices, and the image of the Organisation in the very country it was there to assist.”

37. Notwithstanding its finding that the action of the Applicant “could give rise to the perception of conflict of interest and impropriety” the JDC concluded that the Secretary-General did not take into account a number of mitigating factors in favour of the Applicant and that the decision to summarily dismiss him was disproportionate. The JDC recommended, *inter alia*, the rescission of the decision, the imposition of a written censure and a fine of USD 1,000. In a separate opinion, a Panel member recommended that compensation of the same amount be paid to the Applicant for due process violations.

38. The Secretary-General advised the Applicant on 19 May 2009, that he had decided to reject the JDC's recommendation for the following reasons. Firstly, the evidence on the record showed that the terms of the transaction to buy the musical equipment were “out of the ordinary” and was not a legitimate purchase. Secondly, the loan of USD 800 obtained from Mr. X who was a Sales Manager of UAC could give rise to the perception of a conflict of interest. Thirdly, when the PTF interviewed Mr. X, the latter did not mention that it was a loan granted in a personal capacity.

### **Applicable Law**

39. Staff rule 1.2 (g) states that “Staff members shall not use their office or knowledge gained from their official functions for private gain, financial or otherwise, or for the private gain of any third party (...)”.

40. Staff rule 1.2 (1) provides that “No staff member shall accept any honour, decoration, favour, gift or remuneration from any non-governmental source without first obtaining the approval of the Secretary-General.”

41. The relevant provisions of the United Nations Procurement Manual read as follows:

- a. Section 4.2 (1) : “It is of overriding importance that the staff member acting in an official procurement capacity should not be placed in a position where their actions may constitute or could be reasonably perceived as reflecting favourable treatment to an individual or entity by accepting offers or gifts and hospitality or other similar considerations. The staff member should not have regard simply as to whether they feel themselves to have been influenced, but to the impression that their actions will create on others”.
- b. Section 4.2 (2): In principle, UN staff members shall not accept any honours, decorations, favour, gift or remuneration from any source without first obtaining the approval of the Secretary-General”.

#### **Were the charges established?**

42. As pointed out in its judgment *Diakite* (UNDT/2010/24) the Tribunal maintains that the burden of proof in disciplinary matters is not the same as that obtaining in criminal proceedings: *[t]he Tribunal has first to determine whether the evidence in support of the charge is credible and sufficient of being acted upon (...)*. It further held that *[o]nce the Tribunal determines that the evidence in support of the charge is credible the next step is to determine whether the evidence is capable of leading to the irresistible and reasonable conclusion that the act of misconduct has been proved.*

43. In the present case, it is not disputed that, on two occasions, the Applicant has contracted loans without interest, from UAC and from a person working as a Sales

Manager in a company doing business with MONUC. It is further noted that the Applicant was in charge of UAC in the Procurement section.

44. The Applicant considers that his acts do not constitute misconduct as it has been done outside the purview of procurement. He also argues that he had repaid the loans in full before the investigations started. The Respondent submits that the Applicant did put himself in a situation of conflict of interest.

45. At the outset, the Tribunal observes that the Applicant gave evidence that he had contracted a loan with a person associated to UAC, a UN vendor working with MONUC and which was part of his portfolio of clients. In the light of the applicable law above stated, the Tribunal takes the view that even though the Applicant paid back the loans in full, the Applicant's actions were improper and gave rise to a potential conflict of interest.

**Did the Respondent properly exercise his discretion?**

46. The Applicant has made a general complaint that the decision to summarily dismiss him was based on extraneous factors. This is a serious allegation that needs to be established by persuasive and cogent evidence, and not merely by a general statement.

47. In *Diakite* the Tribunal set out the following criteria:

“The Tribunal considers that in reviewing the exercise of the discretion of the Respondent the following questions must be addressed. First, were the facts presented to the Respondent credible? Secondly, did the Respondent draw the proper inferences from the facts? Did the Respondent act in defiance of due process? Did the Respondent apply the wrong rules or regulations? Did the Respondent overlook any vital piece of evidence? Did the Respondent consider the defence of the Applicant? Was the decision of the Respondent prompted by any personal motive? Did the Respondent show any bias against the Applicant? If one or more of the questions is answered in the negative it may be concluded that the discretion vested in the Respondent was not properly exercised”.

48. The Tribunal is of the view that the Respondent considered all the facts for and against the Applicant and did draw reasonable inferences therefrom. The Applicant gave evidence that he had borrowed sums of money from a sales manager representing a UN vendor. This formed the basis of the Respondent's findings of misconduct.

49. Former staff rule 110.1 provides that:

“Failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances, or to observe the standards of conduct expected of an international civil servant, may amount to unsatisfactory conduct within the meaning of staff regulation 10.2, leading to the institution of disciplinary proceedings and the imposition of disciplinary measures for misconduct.”

50. Former staff regulation 10.2 states that

“The Secretary-General may impose disciplinary measures on staff members whose conduct is unsatisfactory. The Secretary-General may summarily dismiss a member of the staff for serious misconduct.”

51. Based on the above and the established fact that the Applicant had engaged in misconduct, the Tribunal is of the view that the Respondent properly imposed a disciplinary measure.

### **Proportionality of the Disciplinary Measure**

52. The Applicant submits that even if his acts could amount to a perception of conflict of interest, the sanction of summary dismissal was disproportionate to the charges. The Applicant avers that mitigating circumstances should have been taken into consideration insofar as he repaid both loans in full before the investigations started.

53. In disciplinary matters, the Secretary-General has a broad discretion and this includes the determination of what constitutes serious misconduct and the appropriate

sanction to be imposed on the staff member. In reviewing the discretion of the Secretary General in matters of sanction the following factors should be borne in mind: it is not for the Tribunal to decide or consider what sanction or punishment might have been fair and appropriate<sup>2</sup>; the Tribunal should decide whether the sanction as imposed by the Secretary General was a lawful and permissible exercise of the wide discretion entrusted to him<sup>3</sup>; whether the sanction was so disproportionate or unfair that it amounted to an abuse of the discretion of the Secretary General<sup>4</sup>.

54. Undoubtedly the Secretary-General considered the degree of “irresponsibility or recklessness”<sup>5</sup> demonstrated by the acts of the Applicant; and the extent his “departure from common safeguards or practices”<sup>6</sup> which the Organization was entitled to expect by reason of the fact that the Applicant occupied a post with particular financial responsibility. It is not disputed that the Applicant repaid the loans in full. The Tribunal nevertheless finds it strange and most disturbing that the Applicant had to wait 17 months to pay back a total sum of USD 2,400 for the musical equipment and the apartment deposit. The lender of the USD 800 loan stated that he had to “beg” the Applicant to collect the money back. The question may legitimately be asked whether he would have paid the loan or whether anyone would have ever found out about the existence of the loans had the investigation not been initiated. In the present case, the Applicant’s conduct was not at the standard the Organisation may legitimately expect from its staff members. The Tribunal endorses the following approach of the former United Nations Administrative Tribunal:

“Whilst in the vast majority of cases coming to the Tribunal where serious misconduct has been found to have occurred and the staff member has been separated from service, the staff member was found to have engaged in dishonest activity or activity designed to advance his or her situation or financial position, the absence of

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<sup>2</sup> UN Administrative Tribunal Judgment No. 1310, *Facchin* (2007)

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

such a motive does not automatically remove a case from the realm of serious misconduct. One must also consider matters such as the degree of departure from the norm; whether it was a one-off decision or a course of conduct; and, of course, the potential such conduct may have had on the welfare or wealth of the employer organization”<sup>7</sup>.

55. Taking into account the above considerations the Tribunal is of the view that, concerning the loan for the musical equipment, there is insufficient evidence to establish that the Applicant used his office to make personal gain and that the “Crédit sans frais” had been done on an exceptional basis to the profit of the Applicant. As a matter of fact, it does not appear unreasonable, that in a Field Mission where resources are generally limited, the Applicant was a customer of UAC, in his private capacity. As for the other loan, the fact of having contracted a loan on a single occasion in the circumstances explained candidly by the Applicant, was “a one off decision” and not part of a systematic pattern of conduct motivated by moral turpitude. This act cannot necessarily create the irresistible impression that the Applicant intended to or did compromise, the integrity and image of the Organisation, exercise pressure on the supplier by using his official functions to obtain the loans without interest, or that a favourable treatment might have been given to the supplier.

56. With respect to the proportionality of the sanction imposed, the jurisprudence of the former United Nations Administrative Tribunal is clear: “where the sanction is found to be disproportionate, the sanction can be vitiated” (Judgements No.1274, (2005); No. 1090, *Berg* (2002); No. 1151, *Galindo* (2003); and, No. 1167, *Olenja* (2004)). In the circumstances of these cases of staff members with noble goals and no criminal intent, whose misconduct arose from shortcomings in their performance and not from any deliberately fraudulent activity or *mens rea* to commit harm, I cannot but find that the sanction of separation from service was disproportionate and thus

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<sup>7</sup> *Ibid.*

vitiated the discretion of the Secretary-General. The Tribunal therefore holds that the disciplinary measure imposed on the Applicant was disproportionate”<sup>8</sup>.

### **Due Process**

57. On the issue of due process under the relevant provisions of ST/AI/371, the Applicant was made aware of the charges and was given the opportunity to respond to them. There is nothing to indicate that the Applicant was not provided with all the relevant materials in the case to enable him to conduct his defence. The Tribunal concludes therefore that the acts of the Applicant did amount to misconduct but not to serious misconduct warranting summarily dismissal.

### **Findings**

58. The Tribunal takes the view that if the Applicant had not been summarily dismissed, he would have served until the retirement age. It is therefore obvious that reinstatement cannot be an option here. Therefore, pursuant to Article 10.5 (a) of the UNDT Statute, the Tribunal:

- a. Orders the rescission of the decision to summarily dismiss the Applicant
- b. As an alternative, the Applicant is awarded a compensation equivalent to all the benefits he would have been entitled to if he had been terminated instead of being summarily dismissed;
- c. Rejects all other pleas.

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<sup>8</sup> Former United Nations Administrative Tribunal Judgment No. 1310, *Facchin* (2007), dissenting opinion of Vice-President Dayendra Sena Wijewardane

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Judge Vinod Boolell

Dated this 28th day of September 2010

Entered in the Register on this 28th day of September 2010



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Jean-Pelé Fomété, Registrar, UNDT, Nairobi