



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2010/037/  
UNAT/1693  
Judgment No.: UNDT/2011/115  
Date: 27 June 2011  
Original: English

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**Before:** Judge Marilyn J. Kaman

**Registry:** New York

**Registrar:** Santiago Villalpando

IBRAHIM

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for applicant:**

François Lorient

**Counsel for respondent:**

Marcus Joyce, ALS/OHRM, UN Secretariat

## **Introduction**

1. During the time period discussed herein, the Applicant worked as a Security Officer and dog handler with the Canine Unit of the Department of Safety and Security (“DSS”). Some of the Applicant’s colleagues made a report to the DSS Internal Affairs Unit (“IAU”) that the Applicant had abused the working dog, “Buddy”, that had been assigned to him. The IAU initiated a preliminary investigation, after which Buddy was taken away from the Applicant; the Applicant also was transferred to another unit and was suspended with full pay, and disciplinary charges were brought against him. Eventually, the Applicant was cleared of all allegations, but Buddy was not returned to him and he was not transferred back to the DSS Canine Unit.

2. Based on the application and the parties’ subsequent submissions to the Tribunal, the main substantive issues to be addressed in the present judgment are formulated as follows:

- a. Whether it was proper for the Organization to initiate a preliminary investigation against the Applicant under sec. 2 of ST/AI/371 (Revised disciplinary measures and procedures);
- b. Whether the preliminary investigation against the Applicant was properly conducted;
- c. Whether it was proper to remove Buddy from the Applicant;
- d. Whether the transfer of the Applicant to a unit other than the Canine Unit was proper;
- e. Whether the disciplinary proceedings against the Applicant were conducted according to appropriate due process standards as set forth in ST/AI/371;

- f. Whether the decision to suspend the Applicant from duty with full pay pending disciplinary proceedings under former staff rule 110.2 and ST/AI/371, sec. 4, was proper. The Tribunal notes that the suspension was not imposed as a special leave with full pay (“SLWFP”) under former staff rule 105.2(a)(i), although the Respondent in his closing statement and the Joint Disciplinary Committee (“JDC”) in its Report No. 216 refer to the suspension as SLWFP;
- g. Whether the disciplinary proceedings were improperly delayed;
- h. Whether it was proper to maintain the suspension of the Applicant while the disciplinary case against him was pending;
- i. Whether it was proper not to return the Applicant to his former job with the Canine Unit after the disciplinary case against him had been dismissed;
- j. Whether it was proper not to return Buddy to the Applicant after the disciplinary case against him had been dismissed ; and
- k. What compensation is owing, if any, to the Applicant for damages.

## **Facts**

3. The following chronology is based mainly on the outline of facts contained in the undated Report No. 216 of the JDC, with which the parties concurred in their jointly-signed 14 June 2010 submission, on the parties’ written submissions to the Tribunal, and on testimony given at the substantive hearing that was held on 23 March 2011 before the Tribunal.

4. In 2004, the United Nations established the DSS Canine Unit to provide explosive detection services. The dogs of the Canine Unit are considered “working dogs” and are United Nations property. The initial ten canine handlers of the unit,

including the Applicant, were trained by the New York State Police over a 13-26 week period of time. In addition to this specialised training, the handlers were provided with the United Nations Security Canine Operations Manual (“the Canine Manual”), which was submitted in evidence by the Respondent and which was based on an equivalent New York State Police Canine Unit Manual. The Canine Manual includes a number of provisions relating, *inter alia*, to the relationship between the dog handler and the working dog, and was to give the handlers further guidance on how to handle their dogs. At the 23 March 2011 substantive hearing, the Applicant acknowledged that he had been given a copy of the New York State Police Canine Unit Manual when he was trained as a handler and that he knew the contents of this manual.

5. For working dogs assigned to them, the canine handlers are required to care for the dogs in their private homes and to transport them to work each day. Testimony at the substantive hearing by Mr. Bruno Henn, Director, Division of Headquarters Security and Safety & Services, DSS, was that the dogs are paired with their handlers and that the dog/handler unit was considered a “team”. Handlers have their dogs under their control and care at all times, unless the handler is on leave or the dog is sick. For this reason, dog handlers are given additional monthly compensation to cover incidental costs incurred. The selection of dog handlers is carefully monitored by DSS to ensure that dog handlers and their families are capable of fulfilling this demanding role and are prepared to assume its special responsibilities.

6. The Applicant joined the service of the Organization in September 1989 as a Security Officer. In February 2004, the Applicant was assigned as a dog handler within the DSS Canine Unit, and was appointed as a “team leader”. The Applicant was teamed up with Buddy. Effective 1 September 2006, the Applicant was granted a permanent appointment, and was promoted to the S-4 level on 1 December 2006.

7. On or about 3 July 2007, some of the other dog handlers made a report to the DSS management and alleged that the Applicant had conducted himself in an improper manner in connection with his service as a member and leader of the Canine Unit, including that he had physically abused Buddy. According to Mr. Henn, upon receipt of such an allegation (although the situation had never occurred before in the DSS Canine Unit), it would be normal working procedure to separate the dog from the handler pending the outcome of an internal DSS investigation. Mr. Henn testified that such course of action is “absolutely prudent” and this was how similar instances had been dealt with when he was working with the German police force. Furthermore, had Buddy not been separated from the Applicant, this could have affected future donations of dogs to the United Nations from the New York State Police. Mr. Henn made clear that this separation of the dog from the handler at this point in time did not constitute a final decision on the issue.

8. Mr. Henn also testified that, once a working dog has been separated from the dog handler, it also is standard practice for the handler to be reassigned to another unit since, without a dog partner, the handler would not be able to fulfill his/her responsibilities of the Canine Unit. This statement is corroborated by the standard operating procedures for DSS, Nos. 10 (“K-9 Unit”) and 25 (“Confrontation between Security Officer and Staff Member, Delegates, Media Representative, or Other”).

9. Pending the outcome of the investigation under ST/AI/371, sec. 2, on or about 3 July 2007, it was decided that the Applicant was to be separated from Buddy and the Applicant was transferred to the Conference Platoon.

10. On 5 July 2007, the Applicant transported Buddy to the Westbury Animal Hospital, at the request of Lieutenant John Hart, Officer-in-Charge of the DSS Canine Unit. Buddy was examined by Dr. Arthur N. Wilder, Doctor of Veterinary Medicine, who prepared a signed note on the same day indicating as follows:

I have examined 'Buddy' on a regular basis since Jan. 10, 2006. Since that time 'Buddy' has never presented with any physical injury nor did he ever need any surgery.

On 5 July 2007 I examined 'Buddy' and have found him to be in good health.

11. At the request of the Officer-in-Charge of the DSS Canine Unit, a New York State Police Trooper (Mr. Hahl, his first name is unknown) picked up Buddy from the Westbury Animal Hospital and transported Buddy directly to Shaker Veterinarian Hospital.

12. On 6 July 2007, Dr. Lara C. Patrick of Shaker Hospital performed a physical examination on Buddy and completed a signed document dated 10 July 2007 titled "Supporting Deposition" in which she indicated as follows:

[...] on July 6 2007 at approximately 12:00-12:30 pm, I performed a physical examination on "Buddy" with veterinary technician assisting. During the physical exam, the following was observed. "Buddy"'s oral cavity was normal, his eyes were bright and clear, and no debris was observed within the ear canals. "Buddy"'s heart and lungs were normal on auscultation. Abdominal palpation showed marked pain displayed by the canine in the left cranial quadrant. Additional palpation showed marked pain displayed by the canine in the left cranial quadrant. Additionally, the spleen felt enlarged. As a result of the palpation, I examined the abdominal skin and observed that the skin on the left side of the abdomen was notably dark red-purple when compared to the right side. Upon conclusion of the physical examination, and its findings, I began a [sic] orthopedic examination. I found that the canine exhibited pain with flexion of the right carpus and a decreased range of motion in the left hip with pain upon extension. I palpated both sides of the chest and "Buddy" exhibited pain in both instances with remarkably more pain on the right side in the cranial quadrant than the left. The pain level on the right side appeared extreme. I measured pain on a scale of one to ten. In my opinion, the pain exhibited by "Buddy" was a six for the abdomen and an eight for the chest. As a result of the physical exam, I followed with radiographs, ultrasounds and blood work [...] I observed on the ultrasound that "Buddy"'s spleen was greatly enlarged with a mottled appearance [...] I administered "buddy" [sic] pain medications and anti-inflammatory medications to treat his injuries. As a result of my observations, testing and evaluation of "Buddy" I state the following

conclusion. It is my opinion that Buddy suffered blunt trauma to both the thoracic and abdominal cavities. It is my interpretation that the ultrasound shows contusions to the spleen and the right cranial lung lobe.

13. After the examination, Buddy was returned to the custody of the New York State Police, where he apparently remains today.

14. On 9 July 2007, in accordance with the provisions of ST/AI/371 relating to preliminary investigations, the Applicant's case was forwarded to the IAU for such an investigation.

15. Ms. Yugin Zhang, Security Coordination Officer, DSS Compliance Unit, testified at the substantive hearing. She explained that she had 14 years' experience as a police officer in China; that she had completed dog handler investigations there; that before coming to DSS, she had been with the Organization's Office of Internal Oversight Services; that she was the internal DSS investigator assigned to the Applicant's case, and that she was the person who prepared the IAU report of 12 September 2007 (Report No. IAU/NY/010-07/Ive, "the IAU Report").

16. Ms. Zhang explained that the IAU investigation was a fact-finding investigation only and, thus, was administrative in nature, the conclusions of which would be governed by a "balance of probabilities" standard. The IAU investigation would result in a report that would be tendered to the Office of Human Resources Management ("OHRM"), so that a determination could be made whether a formal investigation under ST/AI/371 was necessary. It was her responsibility to gather statements regarding the allegations of misconduct against the Applicant and to determine whether the matter should be carried forward within the Organization to the next investigatory stage, but not to decide whether the Applicant should be charged. Ms. Zhang testified that she had informed all witnesses, including the Applicant, of the allegations being made, following the Standard Operating Procedures within IAU.

17. On 12 September 2007, the investigation report was completed which, *inter alia*, concluded that, “[t]he allegation against [the Applicant] of having physically abused the dog ‘Buddy’ is substantiated”.

18. Following review of the IAU Report by DSS management, the Under-Secretary-General of DSS (“USG/DSS”) forwarded the report and supporting documentation to the Assistant Secretary-General (“ASG”) of OHRM, in accordance with ST/AI/371, sec. 3, on the basis that the preliminary investigation appeared to indicate that the allegations of misconduct were well-founded and that the matter “is to be pursued” under ST/AI/371, sec. 6., in accordance with ST/AI/371, sec. 4. The USG/DSS recommended that the Applicant be suspended for the following reasons, as set forth in his 2 October 2007 memorandum:

The department is also concerned about the ability of [the Applicant] to fulfil the mandate of the Division of Headquarters Security and Safety Services which is to protect staff, delegates, visiting dignitaries and other visitors to the United Nations premises, to prevent damage to United Nations property and to provide safe and secure facilities.

19. In a 5 October 2007 memorandum, Ms. Georgette Miller, the then Director, Division for Organizational Development, OHRM, informed the Applicant that he was being charged with misconduct for physically abusing Buddy, and that he was being suspended from duty with full pay. Ms. Miller’s memorandum stated, *inter alia*, as follows:

...

21. On the basis of the evidence and findings contained in the investigation report and supporting documentation, you are hereby charged with physically abusing your canine partner, Buddy. Your alleged conduct is in violation of the guidelines and procedures of the Canine Unit, and your obligations as an international civil servant.

22. If established, your behaviour would constitute a violation of staff regulation 1.2 [subsections (b), (f) and (q) cited].

23. In addition, if established, your behaviour would also constitute a violation of [former staff rule 101.2(b) and (d)].

24. Finally, if established, your behaviour would constitute a violation of the guidelines of the Canine Unit, which provide that:

- a. canine handlers are responsible for the general care and well-being of the canine;
- b. canine unit dogs are United Nations property, and all security personnel have a responsibility to protect all property

...

27. Please be advised that, due to the nature and gravity of the allegations against you, the Secretary-General has decided that you be suspended from duty with pay, in accordance with staff rule 110.2(a) and ST/AI/371, paragraph 4, with immediate effect. This suspension shall be for the duration of three months or until the conclusion of the disciplinary proceedings.

20. In her 5 October 2007 memorandum, Ms. Miller furthermore outlined the allegations of misconduct against the Applicant, provided the Applicant with supporting documentary evidence (including a copy of the IAU Report), requested the Applicant to provide comments to the allegations within two weeks, informed the Applicant of his right to secure the assistance of counsel, and instructed the Applicant that he was required to surrender his grounds pass.

21. On 15 October 2007, the Applicant replied back to the 5 October 2007 memorandum from Ms. Miller.

22. By letter dated 2 November 2007, the Administrative Law Unit provided the Applicant with a copy of a video clip referred to in the investigation report and explained the basis on which an investigation had been undertaken.

23. On 12 November 2007, the Applicant filed his comments in response to the misconduct allegation. He denied having engaged in any misconduct and claimed that the case against him was improperly motivated. According to the Applicant, two Security Officers of the DSS Canine Unit bore grudges against the Applicant and had raised false complaints against him, in an attempt to retaliate against him. The Applicant claimed that these retaliatory complaints were triggered by the Applicant's

own complaint to DSS management regarding allegations that these two officers had received gifts from United Nations vendors.

24. On 21 January 2008, the case was referred to the JDC for advice under ST/AI/371, sec. 9. A hearing was held on 14 October 2008.

25. In an undated Report No. 216, circulated on 12 January 2009, the JDC unanimously concluded that the evidence against the Applicant was not sufficient to support the misconduct charge against him, and the JDC panel recommended that the Secretary-General drop the charge against the Applicant.

26. On 12 January 2009, the Secretary-General accepted the JDC's conclusion and decided to drop the charge against the Applicant. The letter stated that "no further action would be taken against [the Applicant] arising out of this matter".

27. On 17 February 2009, the Applicant was returned to the Conference Platoon. The Applicant then chose to be assigned to the Special Services Unit. He remained at the S-4 level, the same level he had occupied in the Canine Unit.

### **Relevant legal instruments**

28. Staff regulation 1.2, *inter alia*, states as follows:

...

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

...

(f) ... [Staff members] shall conduct themselves at all times in a manner befitting their status as international civil servants and shall not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations.

...

(q) Staff members ... shall exercise reasonable care when utilizing ... property and assets [of the Organization].

...

29. Former staff rule 101.2, *inter alia*, stated as follows:

...

(b) Staff members shall follow the directions and instructions properly issued by the Secretary-General and their supervisors.

...

(d) Any form of ... physical or verbal abuse at the workplace or in connection with work, is prohibited.

...

30. Former staff rule 110.1 stated as follows:

#### Misconduct

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.

31. Former staff rule 110.2 stated as follows:

#### Suspension during investigation and disciplinary proceedings

(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.

32. Former staff rule 110.4 stated as follows:

Due process

(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, except that no such advice shall be required:

(i) If referral to the Joint Disciplinary Committee is waived by mutual agreement of the staff member concerned and the Secretary-General;

(ii) In respect of summary dismissal imposed by the Secretary-General in cases where the seriousness of the misconduct warrants immediate separation from service.

33. The relevant provision from ST/AI/371 (as applicable at the time) are the following:

II. INITIAL INVESTIGATION AND FACT-FINDING

2. Where there is reason to believe that a staff member has engaged in unsatisfactory conduct for which a disciplinary measure may be imposed, the head of office or responsible officer shall undertake a preliminary investigation ... Conduct for which disciplinary measures may be imposed includes, but is not limited to:

(a) Acts or omissions in conflict with the general obligations of staff members set forth in article 1 of the Staff Regulations and the rules and instructions implementing it;

...

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, such as cheques, invoices, administrative forms, signed

written statements by witnesses or any other document or record relevant to the alleged misconduct.

4. 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.

5. On the basis of the evidence presented, the Assistant Secretary-General, on behalf of the Secretary-General, shall decide whether the matter should be pursued, and, if so, whether suspension is warranted. Suspension under staff rule 110.2 (a) is normally with pay, unless the Secretary-General decides that exceptional circumstances warrant suspension without pay, in both cases without prejudice to the staff member's rights.

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

- (a) Inform the staff member in writing of the allegations and his or her right to respond;
- (b) Provide him or her with a copy of the documentary evidence of the alleged misconduct;
- (c) Notify the staff member of his or her right to the advice of another staff member or retired staff member to assist in his or her responses; and offer information on how to obtain such assistance.

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.

7. The staff member should be given a specified time to answer the allegations and produce countervailing evidence, if any. The amount of time allowed shall take account of the seriousness and complexity of the matter.

If more time is required, it shall be granted upon the staff member's written request for an extension, giving cogent reasons why he or she

is unable to comply with the deadline. If no response is submitted within the time-limit, the matter shall nevertheless proceed.

8. The entire dossier is then submitted to the Assistant Secretary-General, Office of Human Resources Management. It shall consist of the documentation listed under subparagraphs 6 (a), (b) and (c) above, the staff member's reply and the evidence, if any, that he or she has produced. In cases arising away from New York, the responsible official shall promptly forward the dossier to the Assistant Secretary-General, Office of Human Resources Management.

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

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

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

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

34. The now abolished ST/AI/2006/3 (Staff selection system), sec. 2.4, stated as follows:

Heads of departments/offices retain the authority to transfer staff members within their departments or offices to vacant posts at the same level.

### **Applicant's submissions**

35. The Tribunal has had difficulty in comprehending the Applicant's closing statement, drafted by his Counsel, as it is unstructured and poorly written. Counsel generally fails to specify the administrative decisions that his client appeals, and

some of his legal arguments appear self-contradictory. In essence, the closing statement is not of the quality that must be expected from a professional private attorney appearing before the Tribunal (even if acting *pro bono*, as the Counsel for the Applicant indicates is his status in the present case). In the following summary of the Applicant's submissions, the Tribunal reorganised and rephrased the Applicant's closing statement, in an attempt to give them relevance within the context of the present case. Based thereon, the Applicant's principal contentions may be summarised as follows:

- a. Throughout the entire process, the Respondent failed to observe the fundamental safeguards of presumption of innocence, due process and fairness; these principles have been reaffirmed by the United Nations Appeals Tribunal in *Liyanarachchige* UNAT-2010-087 and *Mmata* UNAT-2010-092;
- b. Specifically, the IAU investigation against the Applicant was not conducted in conformity with the following legal principles established by the Dispute Tribunal and the former United Nations Administrative Tribunal (see *D'Hooge* UNDT/2010/044, para. 77, and *Buendia et al.* UNDT/2010/176, and the former Administrative Tribunal in Judgments Nos. 1246, *Sokoloff* (2005), 1260, 1261, 1262 and 1267, *Singhal* (2005), and 1447, *Tissot* (2009)):
  - i. Staff are to be formally notified of allegations of misconduct that are being investigated—Ms. Zhang failed to inform the Applicant about the charges of dog abuse;
  - ii. Evidence supporting such misconduct allegations is to be disclosed—Ms. Zhang claimed to have seen the Applicant threaten Buddy on a DVD video clip, but the Applicant was not provided with this clip;
  - iii. Staff has the right to legal assistance—from the outset of the investigation the Applicant had requested the presence of a

staff counsel, for which reason the first interview was cancelled, but the second interview was called with such short notice that it was not possible for the Applicant to arrange for such counsel to be present; and

- iv. Investigators must verify the accuracy of adverse allegations filed by staff, and a proper case must be established based on such facts and not anonymous tips;
- c. The IAU standard operating procedures under which the investigation of the Applicant was carried out were not in force at the relevant time;
- d. In any event, it was improper for the IAU to conduct an investigation of the Applicant according to its standard operating procedures, since these did not carry any legal authority:
  - i. None of the IAU standard operating procedures had been approved by the Staff Management Coordination Committee, the Office of Legal Affairs or the Office of the Secretary-General. Rather, “[t]hey are the products of some individual minds, who will change them from time to time, and from year to year, without any control by the competent UN authority ... [and] promulgation of binding issuances must be made only by authorized officials in its hierarchy and in accordance with prescribed procedures [in the present case, ST/SGB/1997/1]”;
  - ii. The standard operating procedures allowed the IAU investigators to go on “fishing expeditions”, where neither the allegations nor the supporting evidence were disclosed to the staff;

e. ST/AI/371 should not be applied in disciplinary matters, as it contains major due process deficiencies, and it does not render General Assembly resolution 48/218B (Review of the efficiency of the administrative and financial functioning of the United Nations) inapplicable, particularly the safeguards of fairness and due process during any investigation (Counsel fails to specify which provisions of the General Assembly resolution would be breached by ST/AI/371);

f. Under the IAU standard operating procedures (see, e.g, paras. 1.2.2, 1.9, 2.3 and 3.2), a Security Officer may hold either a contract of the United Nations Development Programme (“UNDP”) or of the United Nations Secretariat—disciplinary investigations should therefore be governed by the UNDP’s guidelines on the application of article X of the Staff Regulations and chapter X of the Staff Rules (UNDP/ADM/97/17 of 12 March 1997, “Accountability, disciplinary measures and procedures”), since those guidelines are more recent and precise than ST/AI/371;

g. The factual conclusions of the IAU Report were based on the balance of probabilities, which is an inappropriately low evidentiary standard in a case such as the present—under recent jurisprudence (Counsel does not cite any cases), the investigation must apply at least a standard of preponderance of evidence when establishing facts;

h. Ms. Zhang did not have proper knowledge of the United Nations Universal Covenant on Civil Rights (sic) and her general training was limited to that of the Chinese Police Academy;

i. Ms. Zhang was biased against the Applicant, which was proven by:

i. Her reliance on Security Officer, Ms. Ivette Garcia’s testimony before the JDC, depriving the Applicant of the benefit of doubt;

- ii. Her inability to explain that many other dogs besides Buddy also suffered injuries;
  - iii. Her only being able to name three out of allegedly nine people who accused the Applicant of dog abuse (in fact, according to the Applicant, only two or three persons had done so); and
  - iv. Her inability to distinguish between firsthand and hearsay evidence;
- j. The testimony of Mr. Henn (Ms. Zhang's supervisor) should be disregarded, since it was based on hearsay and his recollection of the events was inadequate;
- k. In his testimony, Mr. Henn, who endorsed the IAU Report of Ms. Zhang, affirmed that he never reviewed the evidence which prompted the initial disciplinary actions against the Applicant (i.e., the Applicant's suspension from DSS Canine Unit and Buddy being sent to the veterinarian examinations), and that Mr. Henn simply signed the report submitted to him;
- l. According to Mr. Henn, when other dog handlers from the DSS Canine Unit were suspended from duty, they all got their dogs back, but Mr. Henn did not know what had happened to Buddy;
- m. Mismanagement of a backlog of disciplinary cases at the United Nations, as cited by the Respondent, is not an appropriate excuse for suspending the Applicant for 20 months;
- n. After winning his case before the JDC and obtaining the lifting of his suspension, the Applicant never received any apology from the Respondent for his 20 months' suspension, his loss of emoluments, his loss of Buddy or for the protracted proceedings;

o. As a result of the present case, the Applicant has suffered major salary cutbacks, financial hardship, loss of reputation at work and in his neighbourhood, loss of promotion chances, loss of Buddy, family pressures and serious distress.

### **Respondent's submissions**

36. The Respondent's principal contentions may be summarised as follows:

a. The written record shows that the provisions of ST/AI/371 were followed and that there was no error of procedure;

b. The investigation revealed substantial evidence that the Applicant had abused Buddy, which was more than sufficient to decide that suspension was warranted, and the JDC proceedings did not undermine the decision to suspend;

c. The Applicant's claim of bias are unsupported by any reliable evidence and the onus is on him to establish that such bias existed amongst the investigator, senior security officers, colleagues in the DSS Canine Unit and the USG/DSS;

d. Under the jurisprudence of the former United Nations Administrative Tribunal, it was held that the Administration has discretion to suspend a staff member for more than three months, while providing a reason for doing so (see Administrative Tribunal Judgments Nos. 615, *Leo* (1993), and 987, *Edongo* (2000)). Furthermore, the Administrative Tribunal held that a staff did not suffer any financial harm as a result of being suspended for 13 months, if it was with full pay (see Judgment No. 1175, *Ikegame* (2004));

e. The period of 18 months' suspension, while long, was not unreasonable and did not prejudice the Applicant—the Respondent acted with

due diligence in pursuing the Applicant's case and any delays were attributable to the existing backlog of the JDC;

f. The Applicant's suspension was extended at three-month intervals while the disciplinary proceedings were ongoing, and he was informed that his suspension was being extended because the proceedings had not yet been concluded;

g. The issue concerning not returning the Applicant to the DSS Canine Unit after the JDC dismissed the allegation of dog abuse is not receivable, since it is a separate decision and it has not undergone administrative review. However, if deemed receivable, it was, in essence, a proper administrative decision;

h. Since the Applicant was suspended with full pay proceedings, he did not suffer any financial hardship as a result of his suspension, and the Applicant has failed to demonstrate any prejudice from being suspended with full pay.

## **Consideration**

### *General comment*

37. It is the responsibility of an applicant to clearly define the issues of her/his case, as well as the administrative decision s/he wishes to appeal (see the judgments of the United Nations Appeals Tribunal in *Planas* 2010-UNAT-049 and the Dispute Tribunal in *O'Neill* UNDT/2010/203). As similarly stated in *Simmons* UNDT/2011/085, the Tribunal

reminds all staff members ... to present their claims with specificity. Even where a staff member is self-represented, the Tribunal is not obligated to accept applications that are imprecise, vague and ambiguous. To do so would be unduly wasteful of judicial resources.

38. Despite the shortcomings of the Applicant's submissions, the Tribunal nevertheless has considered the Applicant's claims and has examined the contentions made.

*Application of ST/AI/371 to the present case*

39. The Applicant generally claims that ST/AI/371 should not be considered in disciplinary cases like the present one, since the administrative instruction does not properly represent the standards of due process to be applied within the United Nations' system of internal justice. The Applicant therefore contends that Tribunal should instead apply the UNDP's guidelines on the application of article X of the Staff Regulations and chapter X of the Staff Rules (UNDP/ADM/97/17).

40. Under the provisions of its Statute, the Dispute Tribunal's role is that of a judicial body. As such, the Tribunal shall decide on the issues put before it by applying "all pertinent regulations and rules and all relevant administrative issuances in force at the time" (article 2.1(a)). The Tribunal may therefore not set aside the application of an administrative issuance in force, unless it finds that its provisions are in breach of an instrument that has a higher authority in the legal hierarchy of the United Nations normative framework. The Tribunal does recognise that the provisions of ST/AI/371 may be considered to be ambiguous and that clearer legislative guidance could be wished for in this regard. However, for the purposes of the present case, the Tribunal has not detected any inconsistencies between ST/AI/371 and General Assembly resolution 48/218B, as submitted by the Applicant, nor any other superior norm.

41. As to the Applicant's contention that the mentioned UNDP guidelines should be applied, the Tribunal notes that the Applicant did not have any work relationship with UNDP and that, as a consequence, such guidelines may not be considered as forming part of his "terms of appointment" or "contract of employment", as described in article 2.1(a) of the Statute of the Tribunal. The Tribunal therefore concludes that

it may not apply the UNDP guidelines to the present case. At most, such guidelines may be of assistance in interpreting those provisions of ST/AI/371 that might be found ambiguous or lacking.

*Was it proper for the Organization to initiate a preliminary investigation against the Applicant under sec. 2 of ST/AI/371?*

42. The standard for determining whether a preliminary investigation is to be undertaken is defined in sec. 2 of ST/AI/371 as “[w]here there is reason to believe that a staff member has engaged in unsatisfactory conduct for which a disciplinary measure may be imposed”. In other words, to initiate such investigation:

- a. The alleged behaviour must amount to possible “unsatisfactory conduct”, i.e., misconduct under former staff rule 110.1, and
- b. There must be “reason to believe” that the staff member in question behaved in such a way.

Possible misconduct

43. As for the legal status of the Canine Manual, it is only reasonable to conclude that it formed part of the Applicant’s contract of employment as a dog handler; at minimum, it may be viewed as a binding instruction from a supervisor in accordance former staff rule 101.2(b). At the substantive hearing, the Applicant suggested that he had not been properly informed about the contents of the Canine Manual. However, given the Applicant’s intensive training as a dog handler, where the handlers are taught according to the Canine Manual and given the Canine Manual’s easy availability, the Tribunal is not convinced by the Applicant’s argument.

44. It explicitly follows from the Canine Manual that the working “[d]ogs are the property of the United Nations” (see para. X.2). The Applicant has not made any submissions to counter this statement.

45. By abusing a working dog, the dog handler is therefore mishandling property of the United Nations, in violation of staff regulation 1.2(q), by not exercising “reasonable care when utilizing ... property and assets” of the Organization. Under former staff rule 110.1, if such abuse amounted to “unsatisfactory conduct”, it could lead to disciplinary proceedings.

46. Furthermore, it follows from the Canine Manual that the dog handler must “[p]ossess a sincere interest in animals and animal behaviour” and is to “[e]nsure the [working] dog will not aggravate any health problems” (see paras. VI.3 and VI.8). By abusing the working dog, the handler would therefore clearly be in breach of his responsibilities as defined in the Canine Manual.

47. Additionally, abusing a working dog would clearly be a violation of the obligations that United Nations staff members are to uphold as international civil servants under staff regulation 1.2(b), (f) and (q). Finally, former staff rule 101.2(d) prohibits, “Any form of ... physical or verbal abuse at the workplace or in connection with work”.

48. The Tribunal finds that, if the facts were to be proven, the Applicant’s alleged abuse of Buddy would have constituted possible misconduct.

#### Reason to believe

49. Under ST/AI/371, sec. 2, the crucial question for the decision-maker is to determine whether there is “reason to believe” that a staff member has engaged in unsatisfactory conduct for which a disciplinary measure may be imposed. As stated in *Abboud* UNDT/2010/001, para. 4, the “reason to believe” must be more than mere speculation or suspicion; it must be reasonable and must be based on facts sufficiently well-founded, although not necessarily proven, to rationally incline the mind of an objective and reasonable decision-maker to the belief that the staff member has engaged in the relevant conduct.

This is a question of fact and degree. It is a question of judgment, however, and not of discretion. Whether there is “reason to believe” the relevant matter is an objective question of judgment and, if there is, the official has no residual discretion to refuse to conduct a preliminary investigation. The official does not ask, “Do *I* have reason to believe?”, let alone, “Do *I* believe?” He or she must ask, “Is there material that would give an objective and reasonable decision-maker reason to believe?”

50. In the present case, at least two of the Applicant’s colleagues independently alleged that the Applicant had abused Buddy. Even if their motives for accusing the Applicant with such abuse were tainted by ulterior motives or extraneous considerations, namely retaliation, as submitted by the Applicant, the allegations undoubtedly provided a “reason to believe” that dog abuse had occurred. Even if the decision-maker had been aware of the accusers’ possible motivation, given the grave nature of the alleged offense, in particular of physical violence against one of the dogs of the Canine Unit, it would only be reasonable to investigate the allegations.

51. The Tribunal finds that, given the grave nature of the allegations of dog abuse against the Applicant, it was proper for the Organization to initiate a preliminary investigation against the Applicant under sec. 2 of ST/AI/371.

*Was the preliminary investigation against the Applicant properly conducted?*

52. The Applicant raises a number of different concerns in connection with the preliminary investigation undertaken by the IAU, in particular that the investigation was inadequate and biased against him.

53. It follows from the jurisprudence of the Appeals and Dispute Tribunals that when an applicant alleges bias or any other improper motivation against her/him, the onus is on her/him to provide “sufficient evidence” to prove the contention (see *Parker* 2010-UNAT-012 and, e.g., also *Bye* UNDT/2009/083 and *Simmons* UNDT/2011/085).

54. As for the Applicant's general criticisms of the proceedings against him (see para. 35(a) above), he has entirely failed to substantiate any of these contentions, which therefore must be dismissed.

55. With regard to the Applicant's more specific points regarding the preliminary investigations (see para. 35(b) above), his Counsel appears to misunderstand that most of the due process rights to which he refers only vest in an applicant *after* it has been decided to file charges against her/him and not already at the stage of the preliminary investigation, which is also reflected in former staff rule 110.4 and ST/AI/371, sec. 6 (see also *Zerezghi* UNDT/2010/122 and *Yapa and Zoughy* UNDT/2010/204). The very purpose of this initial examination is precisely to establish the facts of the matter in question in order to enable the relevant decision-maker to decide whether the situation may give reason for initiating a disciplinary case.

56. Concerning the right to legal assistance, the Applicant is correct when indicating that this right may arise *before* the formal charges are presented, namely if and when an investigation, preliminary or not, starts to focus adversely on a specific person for a charge of unsatisfactory behaviour.

57. It is a fundamental principle of due process that where an individual has become the target of an investigation, then that person should be accorded certain basic due process rights. While ST/AI/371 requires that the staff member must be notified of her or his right to the advice of another staff member or retired staff member to assist in his or her response only at the time misconduct charges are made, ST/AI/371 does not contain any provision that would imply that he/she has no right to counsel before that moment. Note is taken of Judgment No. 1246 (2005) of the former United Nations Administrative Tribunal, which stated (emphasis added):

IV. Having given due consideration to the foregoing, the Tribunal will next state its decision. First, it wishes to underline the importance that procedure has, an importance which has been emphasized in

recent years throughout developed legal systems, under the title of due process and otherwise known as the principle of no punishment *sine processu*. That importance has been repeatedly highlighted in the various decisions of appropriate organs of the United Nations system and has been further emphasized and developed by the case law of this Tribunal. ...

V. In conclusion, the Tribunal is of the opinion that *the assurances of due process and fairness, as outlined by the General Assembly ... mean that, as soon as a person is identified, or reasonably concludes that he has been identified, as a possible wrongdoer in any investigation procedure and at any stage, he has the right to invoke due process with everything that this guarantees.* Moreover, the Tribunal finds that there is a general principle of law according to which, in modern times, it is simply intolerable for a person to be asked to collaborate in procedures which are moving contrary to his interests, *sine processu*.

58. However, nothing in the present case suggests that the Applicant was denied such a right and he was later properly informed of his right to such assistance in connection with him being formally charged (see ST/AI/371, sec. 6(c)).

59. Finally, the Applicant has not provided any reliable evidence that the preliminary investigation was otherwise inadequate; in particular, he failed to substantiate that Ms. Zhang was not properly qualified as an investigator and/or was biased against the Applicant. His contentions in this regard therefore appear entirely speculative and must be dismissed.

60. The Tribunal finds that the Respondent did not commit any due process violations in connection with the preliminary investigation and that the preliminary investigation under ST/AI/371 was properly conducted.

*Was it proper to remove Buddy from the Applicant?*

61. Since working dogs, such as Buddy, are United Nations' property, the Organization, as their owner, has the full right to make decisions regarding them, including whether they are to be removed from a dog handler. Nevertheless, as with all decisions, the Organization has an obligation to make decisions that are proper and

in good faith (*Utkina* UNDT/2009/096 and *James* UNDT/2009/025). The discretion of the Secretary-General is not unfettered (*Larkin* UNDT/2010/108 and *Nogueira* UNDT/2009/088).

62. According to Mr. Henn's testimony, the dog handler does not her/himself choose the working dog that s/he wants to work with; the pairing of the handler with the dog is undertaken by the instructors, which consider not only matching the personalities of the handler and the dog, but also take into account outside factors such as the handler's family (see also paras. VI and VII of the Canine Manual). After being paired up, the dog resides with the handler, who takes primary responsibility for the dog and the dog only leaves her/his presence if s/he goes on vacation or if the dog gets sick (see also paras. V.4(c) of the Canine Manual).

63. Inevitably, a close personal bond therefore develops between the dog handler, her/his family and the working dog, which is also the underlying philosophy about the handler and dog being a "team". When separating a dog from a handler, aside from taking into account its own priorities and objectives as the owner of the dog, the Organization must therefore also consider the interests of the handler and her/his family, as well as the dog. In his oral testimony, the Applicant also emphasised that the main objective of his appeal was to get Buddy back to stay with his family.

64. As stated above, the Applicant has argued that the allegations of dog abuse were made in retaliation for the Applicant's reporting that these colleagues had received inappropriate gifts from some United Nations vendors. The Applicant also stated that the USG/DSS was hostile to him because the Applicant had revealed some security breaches in connection with bombings of the United Nations facilities in Iraq and Algeria.

65. Again, the onus is on the Applicant to provide "sufficient evidence" to prove the contention, and the Tribunal finds that the Applicant has not met this burden (see

*Parker* 2010-UNAT-012 and, e.g., also *Bye* UNDT/2009/083 and *Simmons* UNDT/2011/085).

66. The Tribunal also finds that, as much as the Tribunal may be sympathetic to the emotional attachment that the Applicant and his family felt towards Buddy, it was in the best interest of Buddy and the Organization to separate the dog from the Applicant until the serious accusation of abuse had been properly investigated.

67. The Tribunal finds that it was reasonable for the Organization to remove the working dog, Buddy, from the Applicant.

*Was the decision to transfer the Applicant to a unit other than the DSS Canine Unit proper?*

68. Pursuant to ST/AI/2006/3, sec. 2.4, it was within the managerial prerogative of the head of department/office to transfer her/his staff members within their department/office insofar as this was done to a vacant post at the same level.

69. The Applicant did not submit that Mr. Henn did not possess the proper authority to transfer him. Rather, the Applicant's main argument appears to be that he was the victim of the conspiracies described above. In reply, at the substantive hearing, Mr. Henn explained, in essence, that after separating Buddy from the Applicant, he had no other option than to transfer the Applicant, since without a working dog there were no functions for the Applicant to undertake as a dog handler in the Canine Unit.

70. Additionally, given the expected animosity in the Canine Unit because of the mutual accusations of misconduct between the team members, it would appear untenable to have kept the Applicant on the team. The reassignment is also in accordance with the procedures for "incidents" with Security Officers as set out in DSS standard operating procedure No. 25, which states that (see para. 25.03(b)):

Upon receipt of written complaint against a security officer, the officer may be reassigned from the area of the alleged confrontation, by the Assistant Chief or Inspector, if so merited to prevent an immediate situation from escalating, pending the results of an inquiry, and or subsequent investigation. The officer will be informed of the reason for his/her re-assignment. It should be noted that disagreements between security personnel on the same post, will initially be resolved by the responding front-line supervisor. This initial resolution will be reviewed by the Assistant Chief or Inspector-in-Charge for its appropriateness. Final disposition remains the prerogative of the Chief of Service, following an investigation into the facts at issue.

71. The Tribunal finds that the decision to transfer the Applicant to a unit other than the DSS Canine Unit was proper.

*Were the Applicant's due process rights observed during the disciplinary process under ST/AI/371?*

72. In accordance with former staff rule 110.4(a) and sec. 6(a)-(c) of ST/AI/371, it follows from the facts that the Applicant, by the 5 October 2007 memorandum and the 2 November 2007 letter from Ms. Miller, was informed of the allegations in writing and of his right to respond to them, was provided with documentary evidence of the alleged misconduct, and was informed of his right to the advice of other staff members in the matter.

73. It further follows from the 5 October 2007 memorandum, that the Secretary-General had authorised the suspension (in conformity with sec. 6 of ST/AI/371), that the Applicant was directed to surrender his grounds pass (sec. 6), that the possible duration of his suspension was indicated to him ("three months or until the conclusion of disciplinary proceedings") (sec. 6), and that he had two weeks to respond to the allegations (sec. 7).

74. Subsequently, the case appears to have been appropriately submitted to the ASG/OHRM, who then decided to refer the matter to the JDC (in conformity with former staff rule 110.4(b) and ST/AI/371, secs. 8 and 9). The Applicant has not pointed to any procedural shortcomings concerning the JDC proceedings, and the

final decision of dismissing the charges was apparently taken by the Secretary-General (in conformity with ST/AI/371, sec. 22).

75. The Applicant has failed to substantiate any due process violations and nothing in the case record suggests that any such breaches have occurred.

76. The Tribunal finds that the disciplinary proceedings against the Applicant were conducted according to appropriate due process standards as set forth in ST/AI/371.

*Was the decision to suspend the Applicant from duty with full pay pending disciplinary proceedings under former staff rule 110.2 and ST/AI/371, sec. 4, proper?*

77. While former staff rule 110.2 did not set out any legal standard for when to suspend a staff member, under ST/AI/371, sec. 4, a suspension could be imposed upon a staff member following a preliminary investigation and had to involve conduct that is of “such a nature and of such gravity”, including where 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 possible”.

78. The Tribunal finds that the decision to suspend the Applicant from duty with full pay pending disciplinary proceedings under former staff rule 110.2 and ST/AI/371, sec. 4, was proper, given the grave nature of the misconduct charge for abuse of a working dog in the Canine Unit.

*Were the disciplinary proceedings improperly delayed?*

The Respondent’s responsibility for the JDC

79. Under former staff regulation 10.1, the Respondent may establish “administrative machinery with staff participation which will be available to advise him or her in disciplinary cases”. Pursuant to former staff rule 110.5, the Respondent

established the JDC and set forth in former staff rules 110.6 and 110.7 the general provisions regarding the JDC composition and procedures.

80. In *Bridgeman* UNDT/2011/018, the Dispute Tribunal found that a delay of almost two years from the filing of the appeal, on 31 August 2006, to the release of the JAB report was unconscionable in the absence of a satisfactory explanation; the Tribunal there found that the Respondent would also be responsible for any delays and/or flaws in these proceedings (referring also to the former United Nations Administrative Tribunal in Judgment No. 1047, *Helke* (2002)). In *Simmons* UNDT/2011/085, this Tribunal affirmed that finding. Further, the Respondent, as the Chief Administrative Officer of the Organization pursuant to art. 97 of the Charter of the United Nations is vicariously liable for the proper functioning of the Organization, also for damages committed to his own employees (under the doctrine of *respondeat superior*).

Was there undue delay?

81. Whether undue delay occurred depends on the specific circumstances of the case in question (see also *Simmons* UNDT/2011/085). From the referral on 21 January 2008 of the case to the JDC until the hearing on 14 October 2008, less than 10 months elapsed. The JDC issued its report on 12 January 2009, three months after the hearing and less than a year after the referral to the JDC. Although this may appear to be a long time for someone in the Applicant's position, given the circumstances of the case and the grave nature of the matter, the Tribunal finds that this time lapse is not excessive under the circumstances.

82. The Tribunal finds that the disciplinary proceedings were not unduly delayed.

*Was it proper to maintain the suspension of the Applicant while the disciplinary case against him was pending?*

83. Under ST/AI/317, sec. 6, a staff member, against whom a charge of misconduct has been made, may be suspended from duty "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”. The Applicant’s alleged abuse of his working dog, Buddy, qualified as conduct for which suspension could be imposed.

84. The Applicant was suspended from duty only while the disciplinary process against him was pending, in conformity with ST/AI/371, sec. 6, and after the charges against the Applicant were dismissed, the Applicant resumed his position with the Conference Platoon.

85. It could be questioned whether it was necessary to suspend the Applicant during the entire disciplinary proceedings and whether the Applicant could have resumed his work with the Conference Platoon earlier, since the misconduct charges related to his work with the DSS Canine Unit. However, given the serious nature and character of the misconduct accusations against him, particularly those concerning physical violence against the working dog, which could—at its highest—have resulted in his summary dismissal (see former staff rule 110.3(a)), it only seems reasonable that the suspension be maintained throughout the entire disciplinary proceedings. Further, the suspension in all respects met the requirements of ST/AI/371, and no basis exists for the Tribunal to question the Respondent’s decision in this regard.

86. The Tribunal finds that it was proper to maintain the suspension of the Applicant while the disciplinary case against him was pending.

*Was it proper not to return the Applicant to his former job with the Canine Unit after the disciplinary case against him had been dismissed?*

87. When the Applicant returned to work after his suspension, he resumed his job with the Conference Platoon, to which he had been assigned pending the outcome of the investigation under ST/AI/371.

88. As stated earlier, under ST/AI/2006/3, sec. 2.4, it was the managerial prerogative of the relevant decision-maker to assign the tasks of her/his staff members within their department/office at their appropriate level, hereunder in terms of transferring them, although s/he would have to exercise her/his discretion in good faith. The burden is on an applicant to demonstrate any prejudice or other ill-motivation against her/him (*Parker and Bye*). In this regard, the Applicant has not shown that there existed any such adversative attitude towards him, and the contention must therefore be dismissed.

89. The Tribunal finds that it was proper not to return the Applicant to his former job with the Canine Unit after the disciplinary case against him had been dismissed.

*Was it was proper not to return Buddy to the Applicant after the disciplinary case against him had been dismissed?*

90. It follows from the facts that ever since Buddy was surrendered to examination at the Westbury Animal Hospital on 5 July 2007, the dog has remained in the custody of the New York State Police. The United Nations would therefore appear to have transferred back the property rights over Buddy to the New York State Police, which originally donated the dog to the Organization. Regardless of the outcome of the disciplinary case against the Applicant, it would therefore seem that the Respondent is not able to return Buddy to the Applicant without the consent of the New York State Police.

91. The question then arises whether the Respondent, as the former owner of Buddy, could be ordered to request the New York State Police to return the dog to the Applicant, as specific performance under the Statute of the Dispute Tribunal, art. 10.5(a). Counsel for the Applicant has not made this explicit plea, but during the case management discussion on 28 September 2010, the Applicant made it very clear that his main objective with the present appeal was to get the dog back.

92. As already stated above, the Respondent as owner of Buddy, had the full right to make a decision regarding its canine working dog, assuming that the decision was properly taken. Before removing Buddy from the Applicant, the Organization took a number of considerations into account, including those of the Organization, of the Applicant and his family, and of Buddy itself. The same considerations would thus also apply if the Respondent were requested to return Buddy to the Applicant from the New York State Police.

93. Given the circumstances of the case, including the close working relationship between the Canine Unit and New York State Police, the Tribunal, however, finds that it fell duly within the Respondent's margin of appreciation to decide not to request the New York State Police to return Buddy to the Applicant after the disciplinary charges against him had been dismissed. For this reason, the Tribunal would also transgress its authority if it were now to issue any such instructions to the Respondent under art. 10.5 of its Statute.

94. Additionally, as stated by Mr. Henn at the substantive hearing, without a dog partner, the Applicant would not be able to fulfill his responsibilities in the Canine Unit and, lacking an assignment that required a working dog to be assigned to him, the Applicant cannot claim any entitlement for the return of Buddy to him. After the investigation, the Applicant remained assigned to the Conference Platoon, where his responsibilities did not require the use of a working dog. Once a staff member transfers to another position (either on her/his own initiative or following directions from the Organization), he/she does not have any entitlement to keep the dog.

95. The Tribunal finds that it was proper to not to return Buddy to the Applicant after the disciplinary case against him had been dismissed.

*What compensation is owing, if any, to the Applicant for damages?*

96. The Tribunal, having rejected all the contentions made by the Applicant under the previous issues defined in the present case, finds that the Applicant is therefore not entitled to any compensation.

97. The Applicant also submits that the Respondent did not issue an apology to him for the dismissed disciplinary charges. While no such right to an apology is defined anywhere in the relevant legal instruments of the internal justice system of the United Nations, based on the fact that the disciplinary case against him eventually was dismissed, it could be argued that the Applicant implicitly is requesting compensation for the non-pecuniary losses that he suffered from being charged with misconduct and suspended from work. It is noted that the Applicant does not appear to have suffered any pecuniary losses from this, since he returned, albeit to another unit, at the same level and step as when he was suspended (the additional remuneration he received as a dog handler was to compensate him for his additional expenses for undertaking this task, and losing it therefore does not amount to a direct economic loss).

98. While the Tribunal, in some instances, could be amenable to such contention, it is still for the Applicant to substantiate the harm which he has actually suffered (see *Antaki* 2010-UNAT-096, para. 20). As to the type of damages that the Dispute Tribunal may award, in *Antaki*, para. 21, the Appeals Tribunal specified that compensation may be awarded “for actual pecuniary or economic loss, non-pecuniary damage, procedural violations, stress, and moral injury”. It further follows from the Statute of the Dispute Tribunal, art. 10.7, that the Tribunal “shall not award exemplary or punitive damages”.

99. In the present case, the Applicant has not been able to point to or demonstrate any sort of “non-pecuniary damage, procedural violations, stress, and moral injury” in connection with his being charged and suspended for possible misconduct, and the Tribunal is therefore left with no basis for an award of compensation.

100. The Tribunal finds that no compensation is owing to the Applicant.

### **Conclusion**

101. The Tribunal finds that, given the grave nature of the allegations of dog abuse against the Applicant, it was proper for the Organization to initiate a preliminary investigation against the Applicant under sec. 2 of ST/AI/371.

102. The Tribunal finds that the Respondent did not commit any due process violations in connection with the preliminary investigation and that the preliminary investigation under ST/AI/371 was properly conducted.

103. The Tribunal finds that it was reasonable for the Organization to remove the working dog, Buddy, from the Applicant.

104. The Tribunal finds that the decision to transfer the Applicant to a unit other than the DSS Canine Unit was proper.

105. The Tribunal finds that the disciplinary proceedings against the Applicant were conducted according to appropriate due process standards as set forth in ST/AI/371.

106. The Tribunal finds that the decision to suspend the Applicant from duty with full pay pending disciplinary proceedings under former staff rule 110.2 and ST/AI/371, sec. 4, was proper, given the grave nature of the misconduct charge for abuse of a working dog in the Canine Unit.

107. The Tribunal finds that the disciplinary proceedings were not improperly delayed.

108. The Tribunal finds that it was proper to maintain the suspension of the Applicant while the disciplinary case against him was pending.

109. The Tribunal finds that it was proper not to return the Applicant to his former job with the Canine Unit after the disciplinary case against him had been dismissed.

110. The Tribunal finds that it was proper to not to return the working dog, Buddy, to the Applicant after the disciplinary case against him had been dismissed.

111. The Tribunal finds that no compensation is owing to the Applicant.

112. Accordingly, the application is dismissed in its entirety.

*(Signed)*

Judge Marilyn J. Kaman

Dated this 27<sup>th</sup> day of June 2011

Entered in the Register on this 27<sup>th</sup> day of June 2011

*(Signed)*

Santiago Villalpando, Registrar, New York