



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2011/070
(UNAT 1668)
Judgment No.: UNDT/2011/207
Date: 6 December 2011
English
Original: French

Before: Judge Jean-François Cousin
Registry: Geneva
Registrar: Anne Coutin, Officer-in-Charge

RASOOL

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Salim Shaikh

Counsel for Respondent:
Tamara Shockley, UNICEF

Introduction

1. The Applicant is contesting the decision of 19 September 2008 whereby the Deputy Executive Director of the United Nations Children's Fund ("UNICEF") maintained the disciplinary measure of summary dismissal of the Applicant, effective 4 October 2007.

2. The Applicant requests rescission of the sanction, reinstatement to his original position with retroactive effect and payment of a sum equal to 36 months' net base salary as compensation for moral damage suffered.

3. The case, which was pending before the former United Nations Administrative Tribunal, was transferred to the United Nations Dispute Tribunal on 1 January 2010 pursuant to the transitional measures set forth in General Assembly resolution 63/253. On 31 October 2011, it was transferred from the New York Registry of the Dispute Tribunal to the Geneva Registry.

Facts

4. On 7 August 2006, the Applicant was appointed Senior Administrative and Finance Assistant at grade GS-7 at the Battagram Zone Office of UNICEF Pakistan. His initial three-month appointment was renewed first for a period of six months, through 30 April 2007, and then for a year, through 30 April 2008.

5. On 28 March 2007, an electric generator was delivered to the Battagram Zone Office. The Abbottabad Zone Office requested quotations for installation of the generator and, on 29 March 2007, received quotations ranging from USD300 to USD900 from three different companies. The Logistics Assistant from the Abbottabad Zone Office contacted the three companies that had submitted bids and requested the only one that had agreed to travel to Battagram without advance payment, the Orient Electricity Company ("OEC"), to contact the Battagram Zone Office in order to arrange for installation of the generator.

6. In late March or early April 2007, two OEC representatives met the Applicant in Battagram to discuss the installation of the generator. In the course of the discussion, the Applicant asked the OEC representatives if they could provide the Office with a quotation for the installation of earthing cables for prefabricated containers. The OEC representatives confirmed that they could provide a quotation, as well as quotations from competitors. Questioned by the Applicant, the OEC representatives admitted that, concerning the installation of the generator, their company had drafted the two quotations from its competitors using their letterheads.

7. On 5 April 2007, the Applicant received from the Abbottabad Office the three quotations for installation of the generator.

8. The following day, he contacted a local electrician in order to obtain a fourth quotation. At a meeting attended by the Applicant, his new Administrative Assistant and the local electrician, the latter had the opportunity to learn the amounts of the other three quotations before the Applicant asked him to prepare his own.

9. The Applicant then asked his Administrative Assistant to prepare a comparative analysis of the four quotations, which she submitted to the Applicant on 12 April 2007. He returned the analysis to her on 17 April 2007 and asked her to submit it directly to their supervisor, the Chief of the Battagram Zone Office.

10. On 25 April 2007, the Chief of the Battagram Zone Office requested the Administrative Assistant to report to the Abbottabad Zone Office to discuss the comparative analysis with the Operations Manager at Abbottabad.

11. Also on 25 April 2007, the Applicant informed his Administrative Assistant that he had learned from the OEC representatives that the three quotations for the installation of the generator had all been prepared by their company. That same day, the Administrative Assistant shared this information with their supervisor, the Chief of the Battagram Zone Office.

12. On 26 April, during a visit to OEC, the Operations Manager at Abbottabad and the Administrative Assistant in Battagram were told by a representative of the company that it was the Logistics Assistant in Abbottabad who had asked him to prepare the competitors' quotations using their letterheads.

13. In an email dated 26 April 2007, the Logistics Assistant in Abbottabad explained that only OEC had agreed to go to Battagram without advance payment. He had therefore requested OEC to contact the Battagram Zone Office and had considered his function to be completed.

14. On 1 May 2007, at the request of the Operations Manager at Abbottabad, who conducted the preliminary investigation, the Applicant and the Administrative Assistant each prepared and signed a written declaration giving their version of the events. In his declaration, the Applicant admitted that the OEC representatives had informed him that they had drafted their competitors' quotations themselves. Also on 1 May, the Operations Manager at Abbottabad sent his preliminary investigation report to the Chief of Operations for Pakistan, in which he concluded that the Logistics Assistant in Abbottabad was innocent and the Applicant was guilty.

15. On 14 May 2007, the representative of the UNICEF Pakistan Country Office informed the Office of Internal Audit at UNICEF headquarters of the allegations that the Applicant had known about the submission of false quotations but had failed to inform his supervisor. He requested that the Applicant should be suspended while the Office of Internal Audit conducted its investigation.

16. At the request of the Office of Internal Audit, a further investigation was conducted in Battagram by the Operations Manager in Abbottabad and the Finance Officer for Pakistan (hereafter "the investigation team").

17. On 25 May 2007, the Applicant was notified of the decision to suspend him from duty with pay during the investigation and until the case was settled.

18. The investigation team interviewed the Applicant on 30 May 2007 and, on the same day, submitted its investigation report, which claimed that the Applicant

had known that false quotations had been submitted and had not told his supervisor.

19. On 17 July 2007, the Director of the Office of Internal Audit submitted his report to the Director of the Division of Human Resources, which concluded that the Applicant had engaged in misconduct.

20. In a letter dated 31 July 2007 from the Division of Human Resources, the Applicant was notified of the charges against him. The letter informed him of his right to seek legal counsel and requested him to submit a response to the charges within two weeks. The letter was accompanied by some supporting documents, namely exclusively the comparative analysis of the four quotations, the email dated 26 April 2007 from the Logistics Assistant in Abbottabad, the written declarations made by the Administrative Assistant in Battagram and the Applicant on 1 May 2007, and excerpts from the UNICEF Supply Manual and Human Resources Manual.

21. On 30 August 2007, the Applicant responded to the letter dated 31 July and once again admitted that the OEC representatives had informed him that they had prepared the two competitors' quotations.

22. In a letter dated 25 September 2007, the Deputy Executive Director of UNICEF informed the Applicant of his decision to summarily dismiss him effective 4 October 2007 for two reasons: having failed to inform his superiors that two of the quotations submitted for installation of a generator in Battagram had been falsified, and having asked another supplier to provide a fourth quotation for the same installation after sharing with him the amounts of the other quotations submitted.

23. On 27 November 2007, the Applicant requested that the decision to summarily dismiss him should be referred to the Joint Disciplinary Committee pursuant to staff rule 110.4 (c) in effect at the time.

24. On 25 February 2008, the Applicant was informed that a Joint Disciplinary Committee would be constituted.

25. On 3 July 2008, the Joint Disciplinary Committee issued its recommendation to uphold the sanction of summary dismissal.

26. In a letter dated 19 September 2008 and received by the Applicant on 11 October 2008, the Deputy Executive Director of UNICEF informed the Applicant of his decision to accept the opinion of the Joint Disciplinary Committee and maintain the sanction.

27. On 7 January 2009, the Applicant informed the former Administrative Tribunal that he had sent it his appeal by diplomatic pouch. The appeal, dated 26 December 2008, was received by the Administrative Tribunal on 29 January 2009 and transmitted to the Respondent on 2 February 2009.

28. On 3 August 2009, after requesting and receiving two extensions of time, the Respondent submitted his answer. The Applicant submitted observations on 14 September 2009.

29. As the case could not be decided by the Administrative Tribunal before its abolition on 31 December 2009, it was transferred to the United Nations Dispute Tribunal on 1 January 2010 and registered by the New York Registry under the number UNDT/NY/2010/030/UNAT 1668.

30. By Order No. 130 (NY/2010) of 25 May 2010, the Tribunal took several measures, ordering the Respondent to submit a copy of the investigation report prepared by the Office of Internal Audit and the parties to submit a joint statement addressing various factual and legal issues and the need for an oral hearing.

31. On 2 June 2010, the Respondent transmitted to the Tribunal and the Applicant a copy of the investigation report.

32. On 23 June 2010, the parties submitted to the Tribunal the joint statement requested of them. With regard to the holding of an oral hearing, the Respondent did not believe that one was needed as the case stood; for his part, the Applicant did not think it was possible to organize an oral hearing owing to logistical reasons but would be willing to participate if appropriate measures were taken.

33. On 18 July 2010, the Applicant submitted his comments on the investigation report.

34. By Order No. 237 (NY/2011) of 11 October 2011, the Tribunal asked the parties whether they had any objection to the case being transferred from the New York Registry to the Geneva Registry, given the significant backlog of cases from the former internal justice system that remained pending in the New York Registry.

35. Neither party having raised any objection, by Order No. 258 (NY/2011) of 31 October 2011, the Tribunal ordered the transfer of the case from the New York Registry to the Geneva Registry.

Parties' submissions

36. The Applicant's contentions are:

a. He bore no responsibility for the invitation to bid, the assessment of the bids or the selection of the supplier. The Logistics Assistant in Abbottabad was the sole person responsible for the invitation to bid; he was also the one who received the three quotations, which all bore the same date, and who contacted the suppliers to provide the quotations. The Logistics Assistant in Abbottabad had not complied with Chapter 7 of the UNICEF Supply Manual in his invitation to bid;

b. The Abbottabad Operations Manager had assumed responsibility for installing the generator, and it was the Logistics Assistant in Abbottabad who contacted the three suppliers after receiving quotations through means that did not comply with the UNICEF Supply Manual. There was collusion between the Abbottabad Zone Office, the Logistics Assistant in Abbottabad and OEC; the means by which the quotations were requested must be disclosed. It should be determined whether the Logistics Assistant in Abbottabad requested the quotations from the three companies, as he should have been suspicious when all three quotations

were submitted on the same day. The Logistics Assistant in Abbottabad should have rejected the quotations since they were all submitted solely by OEC. The three quotations were received by the Abbottabad Office before the two OEC representatives visited Battagram, which is proof of collusion between the Abbottabad Office and OEC;

c. The OEC representative stated that it was the Logistics Assistant in Abbottabad, who reported to the Operations Manager in Abbottabad, who had asked him to prepare the quotations from competitors using their letterheads;

d. He did not approve the quotations since his functions as Senior Administrative and Finance Assistant did not include responsibility for accepting or rejecting quotations. He did not sign any document to that effect;

e. He was made a scapegoat to keep other staff members from being found guilty of fraud. He met the OEC representatives only once and it is impossible to establish any sort of collusion between himself and OEC;

f. He made no attempt to obtain approval of the quotation submitted by OEC. On the contrary, during the period from 5 to 25 April 2007, he attempted to find proof of the collusion between the Logistics Assistant in Abbottabad and OEC, but without success;

g. It was not he but his Administrative Assistant who showed the local electrician the quotations from the three companies and he tried to keep her from doing so. He merely provided the electrician with approximate sums and asked him to give the prevailing market prices;

h. He informed his Administrative Assistant that the three original quotations had all been done by OEC and asked her to tell their supervisor;

i. His due process rights were not respected. At the outset, he was not notified of the decision to constitute an investigation team. In addition, the

composition of the investigation team was irregular since his supervisor and the Operations Manager at Abbottabad had been involved in the matter and the Finance Officer had been appointed by the Administration. Furthermore, the three members of the team were all from the Administration, in violation of staff regulation 10.1 and staff rule 108.1(d), which provide that a staff representative must be present. Chapter 15 of the UNICEF Human Resources Manual, on “Disciplinary Measures and Procedures”, does not provide for the constitution of an investigation team by the Office of Internal Audit;

j. Furthermore, he was not given the opportunity to confront or cross-examine the witnesses during the investigation;

k. Lastly, before imposing the sanction, the Respondent did not share with the Applicant the investigation report, despite the latter’s requests, or the records of the interviews conducted during the investigation. Thus, as the sanction of summary dismissal was imposed on the basis of the report, the Applicant’s rights were not respected;

l. The Applicant received the investigation report after the Tribunal ordered that he should be given a copy; he then noticed that it contained many errors. Instead of pursuing the mandate set out by the UNICEF Representative in Pakistan, the investigators delved into past issues that had been settled without dispute. He had not been the subject of any investigation while working for the World Food Programme;

m. The Joint Disciplinary Committee did not carefully examine the facts in order to determine whether the rules of the UNICEF Supply Manual had been followed by those responsible for the invitation to bid. Its report is extremely short and superficial;

n. The sanction imposed is disproportionate to his alleged misconduct. In the letter informing him of the charges against him, he was accused of fraud, an allegation that is not supported by the facts. In fact,

the Administration suffered no damages and the Applicant himself sought no gain. The Respondent made no distinction between unsatisfactory performance and serious misconduct;

o. The sanction caused irreparable damage to his career and reputation.

37. The Respondent's contentions are:

a. The UNICEF Executive Director has broad discretion with regard to disciplinary matters and delegated that authority to the Deputy Executive Director pursuant to section 15.3.1 of the UNICEF Human Resources Manual;

b. The decision was taken in accordance with the jurisprudence of the former Administrative Tribunal. The facts held against the Applicant were established; namely, that he did not inform his supervisor that OEC had drafted the two quotations submitted under the name of competing companies and that he had disclosed confidential information concerning competitors' quotations to a fourth supplier. Not only were these facts established through the investigation; they were acknowledged by the Applicant;

c. There was no irregularity in the establishment of the facts. The issue of who accepted the quotations and in what form is irrelevant to the settlement of the case, as is the issue of whether it was the Applicant or his assistant who showed the local electrician the quotations;

d. The Applicant engaged in serious misconduct by not informing his supervisors of fraud against UNICEF, in violation of the UNICEF Anti-Fraud Policy;

e. There were no procedural irregularities and the Applicant's due process rights were respected. An investigation was conducted under the direction of the Office of Internal Audit; there is no written rule stipulating

that the Applicant should have been consulted concerning the composition of the investigation team. It is incumbent upon the Applicant to prove that the investigation was biased against him and he has failed to do so. The Applicant had the opportunity to give the investigators his version of the facts;

f. Upon conclusion of the investigation, the Applicant was provided with notification of the charges raised against him and a copy of the relevant documents. He was invited to respond to the charges and was informed of his right to seek the assistance of counsel. The Applicant responded a month later;

g. The issue of whether the Joint Disciplinary Committee examined the regularity of the procurement process is irrelevant to the case. The only question to be decided is whether the facts held against the Applicant suffice to justify his summary dismissal;

h. The sanction imposed was proportionate to the allegations, even if the amount of the fraudulent quotations was not significant.

Consideration

38. Whereas article 16.2 of the Rules of Procedure of the Tribunal states that “[a] hearing shall normally be held following an appeal against an administrative decision imposing a disciplinary measure”, in the present instance, in view of the parties’ replies to Order No. 130 (NY/2010) of 25 May 2010 by Judge Ebrahim-Carstens on this point, this Tribunal found that it was not necessary to hold a hearing.

39. When the Tribunal is seized of an application contesting the legality of a disciplinary measure, it must examine, first, whether there are any procedural irregularities; second, whether the facts held against the applicant have been established; third, whether those facts legally amount to misconduct; and finally, whether the sanction imposed is proportionate to the misconduct.

Regularity of the procedure

40. In contesting the sanction imposed on him, the Applicant first maintains that the investigation process was improperly conducted.

41. Indeed, he alleges that, first, the staff members appointed to investigate the facts held against him should not have been selected without consulting him. However, contrary to the Applicant's contention, there is no written rule stipulating that the Administration must consult with the staff member suspected of misconduct concerning the composition of the investigation team.

42. Second, it emerges from the case file, and, specifically from the report of 17 July 2007, that the investigation was conducted under the supervision of the Office of Internal Audit, in compliance with the UNICEF Anti-Fraud Policy. Therefore, the fact that certain staff members of the service involved in the case had participated in the said investigation does not suffice to establish, as claimed by the Applicant, that the investigation was biased.

43. Moreover, whereas the Applicant submits that he did not have an opportunity to confront or cross-examine the witnesses in the case during the investigation, there is no written rule pertaining to disciplinary matters that offers this option to a staff member suspected of misconduct.

44. Lastly, the Applicant submits that the sanction was imposed without the full investigation report, together with all attached documents, having been provided to him and that this breached his due process rights. The Respondent does not contest the Applicant's claim but maintains only that he received the most important documents.

45. The only documents that were provided to the Applicant before the sanction was imposed are the comparative analysis of the four quotations; the email of 26 April 2007 from the Logistics Assistant in Abbottabad; the written statements made by the Administrative Assistant in Battagram and the Applicant on 1 May 2007; and excerpts from the UNICEF Supply Manual and Human Resources Manual.

46. The documents that were provided to the Applicant only upon the Tribunal's order are the preliminary investigation report of 1 May 2007 by the Operations Manager in Abbottabad; the interview record, which appears not to have been formalized, of the Applicant with the investigation team; the investigation team's report of 30 May 2007; and the Office of Internal Audit report of 17 July 2007.

47. Chapter 15, section 4, of the UNICEF Human Resources Manual, on disciplinary measures and procedures, reads:

15.4.5 If the investigation indicates that misconduct has occurred, the Head of Office/Division or responsible official should immediately report the matter to the Director, DHR giving a full account of the facts and attaching documentary evidence, such as cheques, invoices, administrative forms, signed written statements or any other document or record relevant to the alleged misconduct.

15.4.6 On the basis of the evidence presented, the Director, DHR on behalf of the Executive Director, will decide whether the matter should be pursued.

15.4.7 If the matter is pursued, the Head of Office/Division will:

- a) inform the staff member of the following:
 - i) the allegations of misconduct, including all the reported facts and any evidence obtained (e.g. signed written statements from persons/witnesses having knowledge of the matter) and copies of pertinent documents, etc.;
 - ii) the right to seek assistance of counsel in his/her defence at his/her own expense at his/her duty station; *and*
 - iii) that he/she has two weeks to respond to the allegations of misconduct, during which time the staff member and/or the staff member's counsel may request the Head of Office/Division to provide official records relevant to the case; *and*
- b) give the staff member a copy of this Chapter of the Manual.

48. It follows from these provisions that when the Executive Director of UNICEF decided, based on the report submitted to him by the Office of Internal Audit on 17 July 2007, that there were grounds to pursue the disciplinary proceedings, he should have not only informed the Applicant of the allegations of

misconduct against him, but also provided him with all documentary evidence of those charges. The obligation to ensure due process required the Administration to provide the Applicant with the investigation report, along with all the documents and witness statements gathered; it precluded providing him with only some of the annexes to the report, allowing the Administration to decide which documents warranted provision and which did not.

49. In this instance, the fact that the complete investigation report was not provided to the Applicant until this Tribunal so requested is not in dispute. The Applicant did not have the complete case file in his possession when responding to the allegations of misconduct made by UNICEF or, later, when appearing before the Joint Disciplinary Committee. It follows that the Applicant's due process rights were violated during the disciplinary proceedings and before the Joint Disciplinary Committee.

50. The Tribunal must now consider the implications of the procedural irregularity described above. The Tribunal cannot rescind a disciplinary measure of summary dismissal on the grounds of a procedural error if it believes that in any event, had the due process rights been respected, the disciplinary measure would have been the same.

51. Therefore, the Tribunal must consider whether the sanction of summary dismissal imposed on the Applicant would have been the same even if he had been provided with the complete investigation report. The purpose of the investigation conducted by the Administration was to verify whether the alleged facts were established; therefore, if the alleged facts are not contested, the flaws in the investigation are irrelevant to the question of whether these facts are established.

Whether the alleged facts were established

52. In view of the irregularity noted above, the Tribunal must set aside the entire investigation report and consider only the acts that the Applicant acknowledged, in particular in his written statement of 1 May 2007 and his

response of 30 August 2007 to the charge letter: first, he learned from the OEC representatives in early April 2007 that they themselves had drafted the two competitors' quotations on the latter's letterheads; he asked his assistant to prepare a comparative analysis to be submitted to their supervisor; he did not inform his assistant that the two quotations were falsified until 25 April 2007 and did not expressly ask her to tell their supervisor; and, second, he took the initiative to ask a local supplier to provide another quotation and gave him the opportunity to learn the amounts of the other three quotations already submitted.

53. The reasons for the sanction offered by the Administration correspond precisely to the acts that the Applicant has always admitted having committed and that he did not contest before the Tribunal. Thus, given that the Applicant had acknowledged the truth of the allegations against him, the procedural irregularity committed by the Administration had no effect on the accuracy of the allegations.

Legal characterization of the allegations

54. The Tribunal must now consider whether the Applicant's acts constitute misconduct. The Applicant, who held the post of Senior Administrative and Finance Assistant at the GS-7 level at the Battagram Zone Office of UNICEF Pakistan and who, in that capacity, was responsible for, *inter alia*, certifying the authenticity of competing supplier quotations to his supervisor, did not immediately report to him that two of the three quotations initially submitted for the generator installation were falsified, having been drafted by a competing company. It was only after he had informed his Administrative Assistant of this fraud that the latter, without him asking her to do so, informed their supervisor.

55. Paragraph 6 of the UNICEF Anti-Fraud Policy states:

Any staff member, consultant or other non-staff personnel, or institutional contractor, who has information about a possible fraud involving UNICEF or any of its operations must bring this to the attention of management ...

56. Therefore, especially in light of the Applicant's functions, his actions constitute misconduct.

57. Similarly, the fact that the Applicant requested a local supplier to submit a quotation for the same installation after giving him the opportunity to learn the amounts of the quotations already submitted also constitutes misconduct since this action is a breach of the competition rules, of which the Applicant could not have been unaware.

Proportionality of the sanction

58. While the Secretary-General has broad discretionary authority in determining the sanction to be imposed on a staff member for misconduct, the Tribunal must consider whether the disciplinary measure of summary dismissal, which, at the time of the events, was the most severe disciplinary measure available, is entirely proportionate to the two acts of misconduct in this case.

59. Therefore, the severity of the Applicant's acts must be carefully considered, focusing solely on the allegations against him.

60. First, he was accused of not having informed his supervisors that two of the quotations submitted for the installation of a generator in Battagram had been falsified. At the time of the events, the Applicant had been Senior Administrative and Finance Assistant at the GS-7 level at the Battagram Zone Office for about eight months and, as stated above, was responsible for certifying to his supervisor the authenticity of competing quotations submitted by suppliers. He happened to discover that two of the quotations submitted to the Administration were falsified. He did not inform his supervisors of this, however, and even asked his Administrative Assistant to prepare a comparative analysis. Therefore, this constitutes misconduct on his part. Nonetheless, he did not intend to conceal entirely the information received since he informed his Administrative Assistant of it; she stated that the Applicant had explained that he did not want to cause problems for the Logistics Assistant in Abbottabad, who had requested the quotations and had accepted them without comment. This explanation, which reveals a clear error in judgment, seems plausible to the Tribunal since the case file shows that the Logistics Assistant in Abbottabad was accused by an OEC representative of having set up this system of false quotations together with the

OEC. Therefore, the Applicant was not sanctioned for dishonesty, but solely for failure to report.

61. The second instance of misconduct was to have asked a local supplier to submit his own quotation for the installation of the generator and informing him of the amounts of the three quotations already submitted. It is clear that, in light of his functions, the Applicant engaged in misconduct by letting a supplier know the amounts of the quotations provided by his competitors. Nonetheless, since the Applicant is not accused of having sought to gain financially from this action, the Tribunal finds it plausible that in so doing, the Applicant was attempting to obtain a better price for the installation of the generator on behalf of the Administration.

62. It follows from the above that the facts held against the Applicant clearly show inconsistency and errors of judgment on his part. Nonetheless, considering that he had never been the object of a disciplinary measure in the past and that, in the present instance, he was not accused of dishonesty, the Tribunal considers that imposition of the most severe sanction—summary dismissal—is entirely disproportionate to the acts committed.

63. Thus, the imposed sanction must be rescinded and replaced, in accordance with the judgments of the United Nations Appeals Tribunal in *Abu Hamda* 2010-UNAT-022 and *Doleh* 2010-UNAT-025. The Tribunal considers that in the present instance, the summary dismissal should be replaced by the sanction of demotion from the level of GS-7 to that of GS-6.

64. Since the rescinded decision concerns termination, the Tribunal, under article 10.5(a) of its Statute, must also set the amount of compensation that the Respondent may elect to pay as an alternative to rescission of the contested administrative decision. Since, at the time of his summary dismissal on 4 October 2007, the Applicant was employed on a fixed-term contract ending on 30 April 2008, the Tribunal considers that in view of the misconduct, there is virtually no chance that his contract would have been renewed upon its expiration. Therefore, if the Respondent elects not to reinstate the Applicant retroactively as

from 4 October 2007, he must pay him compensation equal to the net base salary that he would have received at grade GS-6 from that date until 30 April 2008.

65. With respect to the moral damage suffered by the Applicant, while the Tribunal has determined that the sanction of summary dismissal was disproportionate, it must be borne in mind that to a large extent, the moral damage suffered by the Applicant is a consequence of his own misconduct. Hence, the Tribunal decides to award him two months' net base salary as of the date of his dismissal.

Conclusion

66. For these reasons, the Tribunal DECIDES:

- a. The sanction of summary dismissal imposed on the Applicant is rescinded and replaced by the sanction of demotion from GS-7 to GS-6;
- b. If UNICEF decides not to reinstate the Applicant as from 4 October 2007, the Applicant shall receive compensation equal to the net base salary that he would have received at grade GS-6 from that date until 30 April 2008;
- c. As compensation for moral damage, UNICEF is ordered to pay the Applicant two months' net base salary as at the date of his dismissal.

(Signed)

Judge Jean-François Cousin

Dated this 6th day of December 2011

Entered in the Register on this 6th day of December 2011

(Signed)

Anne Coutin, Officer-in-Charge, Geneva Registry