



Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Jean-Pelé Fomété

SANWIDI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON COMPENSATION

Counsel for Applicant:

Edwin Nhliziyo

Counsel for Respondent:

Stephen Margetts, ALU/OHRM

Alan Gutman, ALU/OHRM

Introduction

1. The Applicant, a former staff member of the United Nations Mission in the Democratic Republic of Congo (MONUC), filed an application dated 17 August 2009 appealing a decision to summarily dismiss him for serious misconduct. On 1 March 2010, the Tribunal, in Judgment No. UNDT/2010/036, found that the actions of the Applicant did not amount to serious misconduct or any misconduct deserving of summary dismissal and directed the parties to provide written submissions as to the appropriate relief that should be ordered.

Submissions by the Parties

2. On 6 and 9 March 2010, the Applicant filed the said submissions. The Applicant requests the Tribunal to grant the following reliefs:

(i) To order the rescission of the summary dismissal decision against him and to order the Respondent to reinstate him in the same position, grade and level.

(ii) To order that payment of salary, benefits, and entitlements retroactive to the date of his summary dismissal with reimbursement in full of any medical bills and expenses the Applicant might have incurred during the period he had no medical coverage;

(iii) To award him five years' net base pay as compensation for the prejudice, humiliation, damage, unnecessary stress and mental anxiety caused by the Respondent and by the Office of Internal Oversight Services' Procurement Task Force, as a result of their actions and mishandling of the case.

(iv) To award him damages for the humiliation, stress and uncertainty which has been occasioned by the Administration's mishandling of his case, in accordance with UNAT Judgment No. 812 *Everett* (1997) and for the

anguish and the stress to which he was subjected by the conduct of the Administration, in accordance with UNAT Judgment No. 879, *Karmel* (1998); and

(v) To award him payment of US\$ 5,000 for his defense fees and US\$ 1,000 in direct expenses constituting the total cost of his defense.

3. On 8 March 2010, the Respondent filed his submissions which are summarized below:

(i) That Article 10(5) of the Statute of the Dispute Tribunal provides that the Tribunal may order rescission of a contested decision and/or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Tribunal shall also set an amount of compensation that the respondent may elect, to pay as an alternative to the rescission and/or specific performance ordered. The Respondent argues that the compensation ordered shall normally not exceed the equivalent of the Applicant's two years' net base salary. The Tribunal may, in exceptional cases, order the payment of a higher compensation provided that the Tribunal provides the reasons for that decision.

(ii) That Article 10(5) permits the award of costs only upon a determination of a manifest abuse of process and prohibits the award of exemplary or punitive damages.

(iii) That the Applicant has failed to establish exceptional circumstances warranting departure from the two year limitation on compensation provided for in Article 10(5) of the Statute and, as the Applicant has failed to produce evidence of the alleged damages caused by the Respondent, such damages cannot be awarded.

(iv) That the Tribunal should find that the Applicant's conduct also placed at risk and harmed the reputation of the Organization and that such harm

should be considered in deciding upon a remedy.

(v) That at the time of his summary dismissal, the Applicant was on a fixed-term contract due to expire on 30 June 2008 and that the Applicant would have had no expectation of renewal upon the expiration of his appointment. Accordingly, the Respondent submits that only the remaining approximate five-month period in the Applicant's contract may be taken into account by the Tribunal in any remedy it may decide to impose.

4. On 11 March 2010, the Applicant was requested to advise the Tribunal of any remunerated employment that the Applicant may have been engaged in since his summary dismissal from the Organization. On 12 March 2010, the Applicant's Counsel informed the Tribunal that:

“[Applicant] has been working for a project in Buckinafaso (sic) since July 2008 and his net pay is \$2,600 per month. At the UN, his net pay was \$4,600 plus \$4,000 in MSA.”

5. In an email dated 12 March 2010, the Respondent's counsel advised that:

“The Respondent maintains its position that Applicant has not established any damages. The Applicant's admission of employment proves this matter. Furthermore, the Applicant's public profile on the internet indicates that the Applicant currently holds the position of Procurement Office with the United Nations in Burkina Faso. See attached PDF file or in the alternative the website at [http://www.\[\]/6/283/5a3](http://www.[]/6/283/5a3). The Respondent also objects to presentation of uncorroborated statements by the Applicant and therefore requests that the Applicant provide details of his current employer (and whether employer is associated with the United Nations), and to disclose per-diem and other emoluments he may be receiving from current employer.”

Judgment

6. Having considered the parties' submissions on the matter of the appropriate relief for the Applicant, the Tribunal,

(i) Orders rescission of the decision to summarily dismiss the Applicant;

- (ii) Orders the Respondent to reinstate the Applicant;
- (iii) Orders the Respondent to make good the Applicant's lost earnings from the date of his summary dismissal to the date of his reinstatement with interest at 8% less US\$ 2,600 per month for the said period;
- (iv) Orders that the Applicant be served a written reprimand to be filed in his Official Status File for the reasons cited at paragraph 8.1 (iii) of Judgment No. UNDT/2010/036;
- (v) Fixes the compensation to be paid to the Applicant, should the Secretary-General decide, in the interest of the Administration, not to perform the obligation to reinstate the Applicant, at two years' net base salary at the rate in effect on the date of the Applicant's separation from service, with interest payable at eight per cent per annum as from 90 days from the date of distribution of this Judgment until payment is effected; and,
- (vi) Rejects all other pleas.

(Signed)

Judge Nkemdilim Izuako

Dated this 12th day of April 2010

Entered in the Register on this 12th day of April 2010

(Signed)

Jean-Pelé Fomété, Registrar, UNDT, Nairobi