



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2014/082  
Order No.: 032 (NBI/2015)  
Date: 28 January 2015  
Original: English

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**Before:** Judge Nkemdilim Izuako

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

WOODSON

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON RESPONDENT'S  
MOTION FOR LEAVE TO FILE  
SUPPLEMENTAL INFORMATION  
AND SUBMISSIONS**

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**Counsel for the Applicant:**

Miles Hastie, OSLA  
Rishi Gulati, OSLA Affiliated Counsel

**Counsel for the Respondent:**

Susan Maddox, ALS/OHRM  
Cristiano Papile, ALS/OHRM

## **Introduction**

1. The Applicant is a Team Assistant/Administrative Clerk at the GS-4 level in the United Nations Mission in Liberia (UNMIL). On 11 September 2014, she filed an Application contesting a decision dated 23 June 2014 to extend her Administrative Leave Without Pay (ALWOP) for an additional three-month period on the basis of certain allegations that she had engaged in serious misconduct.

2. The Respondent filed a Reply to the Application on 10 October 2014.

3. On 24 January 2015, the Respondent filed a Motion praying the Tribunal for leave to file supplemental information and submissions (“the Motion”). The Applicant filed a response to the Motion on the same day.

## **Respondent’s submissions**

4. The Respondent submits that at the time of filing his Reply, a decision had not yet been made regarding whether to pursue the matter as a disciplinary case against the Applicant. A decision has since been made in that respect and is relevant to the matters at issue in the Application as it affects the remedies sought by the Applicant.

5. On the basis of the foregoing, the Respondent prays for leave to provide supplemental information and to make further submissions on this matter. Should leave be granted, the Respondent’s supplemental information and further submissions are set out below:

- a. Following a thorough review of the investigation report in this matter, together with the supporting documentation, it was decided not to pursue the Applicant’s case as a disciplinary matter.
- b. As a result of the decision not to pursue the matter as a disciplinary case, by operation of staff rule 10.4(d), all pay withheld from the Applicant for the period that she was on ALWOP, that is, from 4 April 2014 to 15 September 2014, will be fully restored to her. In

that respect, the Respondent seeks to adduce into evidence Annex R13, which is the decision notifying the Applicant that her salary would be restored to her for the said period.

- c. The Application is moot in its entirety there being no issues left for the Tribunal to adjudicate. In particular given that all salary withheld from the Applicant during her period of ALWOP is being restored to her, her claim for financial loss is moot.
- d. As concerns the Applicant's claim for moral damages, the Applicant provided no evidence in support of this claim. There is no basis for moral damages, and in the circumstances, an award of compensation on this ground would be equivalent to an award of punitive damages which is expressly prohibited by art. 10.7 of the Dispute Tribunal's Statute.
- e. There being no further issues for adjudication, nor any basis for further remedies, the Application should be dismissed in its entirety.

#### **Applicant's submission**

6. The Applicant submits that she has no objection to the Respondent's submissions at paras. 5(a) and (b) above and the introduction of the evidence marked as Annex R13.

7. The Applicant submits that the Motion is in fact a motion for summary judgment and that a motion for summary judgment may only be granted when there is no dispute as to the material facts of the case and a party is entitled to judgment as a matter of law. This has been neither alleged nor proven.

8. The Administration has not alleged or proven that all pay withheld has been restored to the Applicant. Accordingly, the Administration's argument in paragraph 6, that no claim for financial losses has occurred, is unsustainable or at a minimum, premature. On that basis alone, the Application cannot be dismissed as moot.

9. With respect to the claim for moral damages, naturally, the full extent of those moral damages will not be measureable until her income has been restored. The Applicant expects to adduce evidence, in documentary or oral form, of the consequential harm she has suffered. The Applicant also expects to argue that her placement on ALWOP was a fundamental breach of her contract of employment.

### **Consideration**

10. The Respondent submitted, inter alia, that there being no further issues for adjudication, nor any basis for further remedies, the Application should be dismissed in its entirety. In response the Applicant submitted that the Respondent's Motion is in fact a Motion for summary judgment and that a motion for summary judgment may only be granted when there is no dispute as to the material facts of the case and a party is entitled to judgment as a matter of law.

11. The Motion raises the following questions for consideration:

- a. Are there any further issues arising for adjudication in this case or any basis for further remedies in light of the Respondent's latest filings and submissions?
- b. Is the Respondent's Motion in fact a Motion for summary judgment?

12. In her Application dated 11 September 2014, the Applicant prayed the Tribunal for the following reliefs:

- a. That certain findings of the Management Evaluation Unit (MEU) in its decision dated 22 July 2014 decision be quashed;
- b. The Applicant be allowed to assume her duties with full pay at UNMIL immediately, or alternatively, the decisions to place her on ALWOP be substituted with administrative leave with pay; and
- c. The Applicant be awarded USD10,000 in compensation for:

- i. Reputational loss.
- ii. Emotional turmoil.
- iii. Loss of opportunity.
- iv. Financial loss caused by her being placed on ALWOP since April 2014.

13. A close reading of the remedies sought by the Applicant makes it immediately apparent that the Respondent's latest submissions do not address all the legal issues arising for determination in this case. In seeking the dismissal of the substantive Application, the Respondent is effectively asking for judgment in his favour. As correctly argued by the Applicant, the Respondent is in fact requesting the Tribunal to issue a summary judgment.

14. Article 9 of the Tribunal's Rules of Procedure states that,

A party may move for summary judgement when there is no dispute as to the material facts of the case and a party is entitled to judgment as a matter of law. The Dispute Tribunal may determine, on its own initiative, that summary judgement is appropriate.

In accordance with art. 9, in order to successfully move for summary judgment, a party must be able to show that: (i) there is no dispute as to the material facts of the case and (ii) that the party is entitled to judgment as a matter of law.

15. In the present case, the Applicant submits that the Administration has not alleged or proven that all pay withheld has been restored to the Applicant. The Applicant further submits that with respect to her claim for moral damages, the full extent of those moral damages will not be measureable until her income has been restored and that she expects to adduce evidence of the consequential harm she has suffered. The Applicant also expects to argue that her placement on ALWOP was a fundamental breach of her contract of employment.

16. The present case is not a case where the factual matters, let alone the legal issues, are straightforward or clearly in favour of the Respondent. Ultimately it is for the Tribunal to consider the facts and the law to determine the outcome of the

case so as to do justice in all the circumstances of the case. The Respondent's Motion, insofar as it covertly aims to have this matter disposed of by way of summary judgment, is therefore dismissed.

**Conclusion**

17. The Respondent's request for dismissal of the Application is rejected.

*(Signed)*

Judge Nkemdilim Izuako

Dated this 28<sup>th</sup> day of January 2015

Entered in the Register on this 28<sup>th</sup> day of January 2015

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi