

UNDT/2010/214, Kamunyi

UNAT Held or UNDT Pronouncements

i. Whether the Applicant's suspension of 26 May 2006 was lawful: The Tribunal found that the Chief of Security/UNON unilaterally and verbally suspended the Applicant in breach of the Staff Rules at that time. It was noted that such a decision could only be made by the Assistant Secretary-General, Office of Human Resources Management (ASG/OHRM) who was the properly delegated individual. Further, the Applicant was not given reasons for his suspension and the suspension was not made in conjunction with a charge of misconduct. ii. Whether the Applicant was lawfully placed on SLWFP: The Tribunal noted that the reasons for granting special leave are set out clearly in the rule and that the rule confers a general power on the Secretary-General to grant special leave in exceptional cases. However, the specific grounds on which special leave may be granted does not include disciplinary cases. In this case, the Chief/HRMS had no power to put the Applicant on SLWFP. The Tribunal found that the decision of the Chief/HRMS was unwise and unlawful. iii. Whether the Organization followed laid down procedures in handling the waiver of immunity, arrest and detention of the Applicant: The UN Charter provides that officials of the Organization shall enjoy privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization. Once specific procedures are followed, waiver of immunity can be granted if it is in the interest of the Organization or where immunity would impede the course of justice. The Tribunal found that the Applicant was arrested without official waiver of immunity and that even after his arrest there was no formal protest made against his arrest. The Tribunal found that the procedures in the relevant UN rules and administrative issuances with respect to the handling of the arrest and detention of the Applicant by the Kenya Police were not followed by those charged with making complex legal and diplomatic decisions on immunity and its waiver. iv. Whether the decision to reprimand the Applicant for refusing to hand over his firearm was lawful: The Tribunal noted that insubordination is the wilful failure to obey a lawful order of a supervisor, therefore requiring more than proof of refusal of an instruction. There is a requirement that the instruction has to be both lawful and reasonable. The Chief

of Security did not inform the Applicant of the reason behind his request for him to hand over his personal firearm and he did not reassure the Applicant of the lawfulness of his request. The Tribunal found that the Applicant's refusal did not amount to insubordination and therefore the decision to reprimand him was inappropriate. v. Whether the transfer of the Applicant from the UNON Department of Safety and Security Services to the UNON Division of Conference Services was vitiated by lack of due process: Although the Applicant was not consulted before the decision to reassign him was made, the Tribunal found that it was a lawful exercise of discretion. Given the history of the events that took place, the Tribunal considered that it was a prudent management decision to avoid the almost inevitable conflict that would have occurred if the Applicant had returned to work for the Safety and Security Services.

Decision Contested or Judgment/Order Appealed

The Applicant contested his suspension, placement on SLWFP, the issuance of the reprimand and his transfer. Background The Applicant was employed by UNON/SSS as a security officer. While off duty on 16 May 2006 he was accosted by 3 armed men at Thika Road-Kasarani area. He removed his personal firearm and threw it in a nearby flowerbed and escaped the scene of the incident. The Kenya police later assisted him in recovering his firearm. On 19 May 2006, the then acting Director General of UNON received an anonymous email containing details of an alleged plot to kill her. On 22 May 2006, the UNON armory inventory revealed that a UN Glock Pistol was missing and could not be accounted for. On 23 May 2006, the Kenya Police notified UNON/SSS of a recovered Glock Pistol at the same area where the Applicant was attacked earlier in the month. On 26 May 2006, the Chief of Security/UNON called the Applicant to a meeting and requested him to hand over his private weapon but the Applicant declined due to public law and safety reasons. The Chief of Security then orally suspended the Applicant and ordered him exit the UNON premises. On 29 May 2006, the Chief, Human Resources Management Services (HRMS), informed the Applicant that he had been placed on special leave with full pay. On the same day, the Kenya police sought waiver of the Applicant's immunity so that they could question him. On 9 June 2006, the Applicant was arrested by the Kenya Police and was in custody for 4 days. The investigations against the Applicant lasted over 2 years during which time the Applicant was not permitted to work although he remained on full pay. Following a report from an

Office of Internal Oversight Services (“OIOS”) investigation, he was eventually charged with misconduct but no disciplinary action was taken against him. He was, however, reprimanded for the 26 May 2006 incident involving the Chief of Security. He was subsequently transferred from the Department of Security and Safety Service to the UNON Division of conference services where he currently works.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Tribunal ordered the rescission of the unlawful decisions (i.e. suspension, placement on SLWFP and the reprimand) and ordered that references to them be removed from the Applicant’s official status file. Further, the Respondent was ordered to compensate Applicant in the amount of two years six months' net base salary due to the exceptional circumstances of this case.

Full judgment

[Full judgment](#)

Applicants/Appellants

Kamunyi

Entity

UNON

Case Number(s)

UNDT/NBI/2009/03

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

16 Dec 2010

Duty Judge

Judge Shaw

Language of Judgment

French

English

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Special leave (with or without pay)

Disciplinary matters / misconduct

Privileges and immunities

Waiver of immunity

Applicable Law

Administrative Instructions

- ST/AI/292
- ST/AI/309/Rev.2

- ST/AI/371

Agreements, conventions, treaties (etc.)

- Agreement on Privileges and Immunities of the United Nations concluded between the Swiss Federal Council and the Secretary General of the United Nations on 19 April 1946
- Headquarters Agreement Between the United Nations and the Government of Kenya

Former Staff Rules

- Rule 101.2(c)
- Rule 105.2
- Rule 110.2
- Rule 110.3(b)
- Rule 110.4

GA Resolutions

- A/RES/76(I)

Laws of other entities (rules, regulations etc.)

Other UN issuances (guidelines, policies etc.)

- UN Field Security Handbook

Secretary-General's bulletins

- ST/SGB/198
- ST/SGB/2002/1
- ST/SGB/2002/13
- ST/SGB/2008/13
- ST/SGB/2010/6

Staff Regulations

- Regulation 1.1(f)
- Regulation 1.2(b)
- Regulation 1.2(c)
- Regulation 5.2

Staff Rules

- Rule 10.4

UN Charter

- Article 2.7

UNDT RoP

- Article 17.1

UNDT Statute

- Article 10.5(a)
- Article 10.5(b)

Related Judgments and Orders

UNDT/2010/044

UNDT/2010/172