



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2010/030  
(UNAT 1627)  
Judgment No.: UNDT/2010/128  
Date: 22 July 2010  
Original: English

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**Before:** Judge Coral Shaw

**Registry:** Geneva

**Registrar:** Victor Rodríguez

IKPA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for applicant:**  
Marcus Joyce, OSLA

**Counsel for respondent:**  
Bettina Gerber, UNOG

## **Introduction**

1. The applicant was employed as a G-2 level Security Officer by the Security and Safety Section (SSS) of the United Nations Office at Geneva (UNOG) on a number of short-term contracts from February 2003 until his separation in February 2006. While still employed, he applied for two advertised vacancies, was interviewed, but not selected for either. Based on information gathered at the selection process, it was decided that he did not have the necessary integrity to hold the position of a security guard and the decision was made to separate him.

2. After an unsuccessful request for administrative review, the applicant appealed to the Geneva Joint Appeals Board (JAB). The JAB panel recommended the payment of one week of salary in lieu of notice and one month's salary for moral damage suffered by the applicant. The Secretary-General accepted this recommendation.

3. The applicant appealed to the former United Nations Administrative Tribunal (UNAT) and the case was transferred to the United Nations Dispute Tribunal (UNDT) as of 1 January 2010.

4. The applicant contests the decision to separate him from service with the United Nations from 10 February 2006.

## **The issues**

5. The nature of the case and the issues to be decided shifted from those originally pleaded in the appeal to the former UNAT. In the course of directions hearings, both parties made appropriate concessions which resulted in the issues being refined and reduced.

6. At the hearing, counsel for the respondent advised the Tribunal that as the respondent was not in a position to prove otherwise, it conceded that the applicant's short-term contract had been terminated as a result of the selection

process. Because the requisite notice period was not given, the respondent accepted that it did not follow the correct procedure for termination.

7. These concessions left the following issues to be decided by the Tribunal:
  - a. Did the applicant have a legitimate expectation that he would continue to be recruited on short-term contracts?
  - b. Did the person who made the decision to terminate his employment have the authority to do so?
  - c. Was the evidence relied on not to select the applicant for the post for which he applied and to terminate the short-term employment gathered in a fair and reasonable manner?
  - d. What compensation, if any, should be awarded to the applicant?

### **Facts**

8. These facts are based on an agreed statement of facts, witness statements of evidence and the evidence given by witnesses for both parties at the hearing.

9. Before joining the United Nations, the applicant served with the Nigerian Army as a non commissioned officer with the rank of corporal. In that capacity, he worked as a clerk to Regimental Sergeant Major. His duties included taking enforcement action which he said involved preparing charges for prosecution. In his personal history profile (PHP), he described himself as an officer in the Nigerian Army.

10. The applicant entered the service of the United Nations as a Security Officer in the Security and Safety Section on 3 February 2003. His employment was under the 300 series of the former Staff Rules, in the form of regularly renewed short-term contracts, at first daily contracts, then monthly and three monthly.

11. From the evidence of witnesses employed at the relevant time in and around the Safety and Security Section at UNOG and the submissions of counsel, there is little doubt that there was a need for reform of the system of employment

of UN Security Staff. Witnesses spoke of perceived unfairness in selection of security officers for promotion and training, which in their opinion affected the applicant's chances of professional development and advancement. There was a need to professionalise the service and to regularise the contractual status of the employees.

12. To meet this need, a new Department of Safety and Security was established in January 2005 as part of the United Nations Secretariat and a large number of new Security Officer posts were created, including at Geneva. A wide ranging recruitment campaign was launched in March 2005.

13. The selection procedure was highly structured. An External Security Officer Specialist was engaged to participate in the interviews and a panel was convened to make recommendations of suitable candidates for the advertised positions to the Officer-in-Charge of the Security and Safety Section. The Officer-in-Charge was responsible for making the final decision.

14. In addition to the usual requirements of clerical tests, medical examination, firearm testing, and interviews, all applicants were required to take a written exam to check their ability to communicate in French and English and to write reports, as well as a psychological test to check their aptitude to carry a firearm.

15. The interview panel drew up a competency-based interview sheet to rank the candidates who were interviewed. The competencies were: 1. background experiences/knowledge/professionalism, 2. integrity/respect for diversity, 3. accountability, 4. client orientation, 5. teamwork, 6. communication, and 7. technical competency/knowledge, skills, expertise. The interview panel also briefly commented on each candidate. Candidates also had to undergo a psychological test.

16. In March 2005, the applicant applied for the posts of Security Officer (G-3) and Security Corporal (G-4). He was interviewed for both positions in August 2005.

17. The External Security Officer Specialist held the rank of officer in the Canadian army. He perceived that there was a discrepancy between the

applicant's claim in his PHP that he had been an officer in the Nigerian army and the duties he told the interview panel he had performed as a corporal. The Specialist could not accept that a person of the applicant's rank could describe himself as an officer or would have been involved in court martial investigations. He also doubted that the applicant would have been the Officer-in-Charge of a section or that he could have been in charge of computer training as he alleged. The Specialist felt that the applicant's answers were not clear, flowing or straightforward.

18. Although he was convinced that the applicant had not been truthful about his past functions in the Nigerian army, the Specialist accepted under cross examination that no enquiries were made of the Nigerian army or the applicant's former superiors to check out his account. The interview panel did make checks about the applicant's other former employers. One business which was contacted denied having employed him. On the strength of those enquiries but without reference back to the applicant, the panel decided he had not been truthful about that employment. At the hearing before the Tribunal, it was clarified that he had been employed by that business but it had since changed its name and the panel was mistaken in its conclusions.

19. The interview panel formed the view that the applicant's lack of truthfulness raised serious concerns about his integrity, a core value in the UN. It was also critical of the quality of the applicant's answers to some practical and technical questions and had doubts about his competence.

20. Nevertheless, it was decided to give him a second chance and he was interviewed again in September 2005. The applicant took documentary evidence of his military experience and some photos to that interview. He told the Tribunal that the panel did not want to see these and told him it was too late for that. There is no record that they were considered. The second interview focused more on technical knowledge and client orientation and did not traverse the question of his army experience.

21. After the second interview, the panel confirmed its initial assessment and findings which were:

- The applicant's integrity, core value, did not meet the United Nations standard;
- Contrary to what was on his PHP, he was not an officer in the military but a soldier;
- He could not have conducted military internal investigations;
- He could not have prepared military charges for court martial offences;
- It was doubtful that he was ever the Officer-in-Charge of a section at rank of corporal;
- It was doubtful but not excluded that he was in charge of giving computer training to officers;
- On client orientation, core competency, he showed very limited awareness and could not name who the Security's clients were;
- He did not demonstrate any readiness to help others;
- He considered only the tasks at hand without much regard for anything else and his level of initiative was considered very basic;
- He did not show reasonable knowledge of the work of a Security Officer;
- He did not show knowledge of the force continuum and theoretically would have shot someone in the back, which goes against the strict policies on the use of force.

22. The applicant was awarded 20.25 points and ranked 37 out of 39 candidates. It was noted on the interview sheet that he had passed the written language tests. The psychologist's report classed the candidate in the category "C/D" out of five categories (category A to E). The panel recommended that he should not be appointed to the position for which he had applied.

23. The applicant disputes these findings and explained to the Tribunal the answers he would have given the interview panel if he had had the proper chance to do so.

24. Throughout this procedure, the applicant was under the impression that if he did not get a regular post, he would be able to continue on short-term contracts as there was still a need for short-term staff. I accept his evidence that he was never told that the short-term contracts would end if he was not selected.

25. After the panel made its recommendations but before he was told the outcome of the selection process, the applicant was in fact given another short-term contract in writing for the period from 1 November 2005 to 17 November 2005. In December 2005, he was informed that his contract was being renewed. Although no contract was provided for him to sign in December, the applicant continued to work without interruption. He believed that this contract was until the end of March 2006.

26. The panel also recommended against the continuing employment of the applicant. This was revealed in a letter from the Officer-in-Charge, SSS, to the Officer-in-Charge, Human Resources Management Service (HRMS), dated 25 January 2006, which was produced by the respondent after the hearing.

27. In December 2005, the Officer-in-Charge, SSS, held an informal interview with the applicant. He agreed with the panel's recommendation not to select the applicant for the positions and that his employment with the UN should not continue.

28. Although the mandate of the interview panel was to consider the suitability of candidates for the advertised vacancies, it went further and made a recommendation about the continuing employment of the applicant by the UN. The decision to terminate the applicant's contract and separate him from the UN was made by the Chief, SSS.

29. On 9 February 2006, the applicant was called to a meeting with the Chief, SSS, the Assistant Chief, SSS, who was present as a witness, and a Human Resources Officer. The applicant was informed verbally that he had not been selected for either of the posts for which he had applied. He was further informed

that his employment with the Security and Safety Section would not continue beyond 10 February 2006.

30. Although the applicant appeared to the Assistant Chief, SSS, to be calm and collected at this interview, his body language showed surprise and the Assistant Chief stayed with him after the interview until he gained his composure.

31. The Assistant Chief, SSS, who is no longer employed by the UN, gave evidence at the hearing. He had had personal experience of the applicant while he was employed as a security guard. He was surprised at the conclusions of the interview panel. He said the applicant's performance had always been well above satisfactory and had never had negative reports about him. In fact, he has since employed the applicant as a security guard outside the UN and found that he worked well. He also confirmed that a remnant of the old system existed at UNOG to this day and there are still people employed on short-term contracts.

32. The applicant, who had never been told that the continuation of his services in UNOG depended on his selection as a security officer, was not only disappointed that he had not been successful in the positions he had applied for but was shocked to learn that his contract was being permanently terminated.

33. On 9 February 2006, two Personnel Actions (PAs) were issued for the applicant. The first was entitled "[e]xtend [a]ppointment" and covered the period from 1 January 2006 to 10 February 2006. The second PA was entitled "[s]eparation" effective on 10 February 2006. On 10 February 2006, the applicant was separated from the Organization.

34. From that date the applicant made several attempt to get work. He obtained two short contracts in 2006 and another two weeks' work in early 2007. His attempts to obtain work at the World Health Organization were unsuccessful. He was told that he should not apply until his issues at UNOG had been resolved. It was only with assistance of the former Assistant Chief, SSS, that he obtained continuous work from March 2008.



## **Discussion of the issues**

### **Issue No. 1: Did the applicant have a legitimate expectation that he would continue to be recruited on short-term contracts?**

35. This is the least meritorious of the applicant's arguments and can be dealt with shortly. I accept the submission on behalf of the respondent that under the 300 series of the former Staff Rules, the applicant had no contractual expectation of renewal at the end of each short-term contract. Former staff rule 304.4 (a) provided that all such appointments were temporary appointments for a limited period and the applicant was aware of this. There was no evidence of any representations that could be construed as sufficient to give him such an expectation.

### **Issue No. 2: Did the person who made the decision to terminate his employment have the authority to do so?**

36. Counsel for the applicant submitted that the Chief, SSS, at UNOG, did not have the delegated power to separate the applicant from service with the UN.

37. On behalf of the respondent, it was submitted that the Secretary-General has a wide discretionary power to terminate a short-term contract at any time in the interests of the UN provided that power is not abused. In response to a request from the Tribunal for evidence of the delegation, the respondent produced two documents which will be discussed below.

## **Consideration**

38. The respondent submitted a document which refers to delegation of authority in the administration of the 300 series of the Staff Rules. This document is a Note by the Secretary-General A/54/257 headed "Administrative issuance on delegation of authority" of 18 August 1999<sup>1</sup>. Paragraph 8 of the note reads:

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<sup>1</sup> This issuance was a response to a request by the General Assembly in 1999 for a consolidated and comprehensive compendium of all administrative circulars on the delegation of authority.

Originally, the 300 series of the Staff Rules covered only short-term staff appointed for a period not exceeding six months. Short-term staff are recruited and administered at offices away from Headquarters without reference to the Office of the Human Resources Management.

39. The other document submitted by the respondent was a memorandum dated 28 April 2005 from the Department of Safety and Security, Division of Headquarters Security and Safety Services, New York, to all Chiefs of Security at Offices away from Headquarters, which states *inter alia*:

Please review your present recruitment procedures in view of the practice in New York and expedite discussions with the Human Resources divisions at your duty stations in order to explore whether a similar policy could be adopted.

40. The selection process for posts in the General Service category in Geneva is detailed in information circular No. 17 (IC/Geneva/2003/17: New Staff Selection System for General Service Staff in Geneva). This circular provides the following:

The appointment and promotion of candidates to posts at the G-1 to G-4 levels will be made based upon the recommendation of the Programme Manager subject to approval by the Director-General, without reference to a review body.

Paragraph 8 states:

[T]he Programme Manager's recommendation for promotion and/or recruitment of a candidate against a vacant post is subject to approval by the Director-General, UNOG. HRMS will notify the selected candidate, as well as the Department/Service concerned about the final decision.

41. The contents of these documents are limited to appointment and promotion. It is clear that UNOG had the power to recommend and select candidates for vacant G-1 to G-4 posts. The documents do not, however, refer to termination and are not applicable to the ending of the applicant's employment.

42. The employment of staff appointed on contracts of limited duration, otherwise known as short-term contracts, was governed by the former 300 series of the Staff Rules. These rules state that they are to be read in conjunction with the Staff Regulations of the United Nations, which "embody the fundamental

conditions of service and the basic rights, duties and obligations of the United Nations Secretariat... The Secretary-General, as the Chief Administrative Officer, provides and enforces such Staff Rules, consistent with the principles expressed in the Staff Regulations, as he considers necessary.”

43. The starting point is therefore the Staff Regulations contained in ST/SGB/2002/1, which was in force at the relevant time. Article IX is a general provision which preceded the more specific rules of termination. It is headed “Separation from Service”. Staff regulation 9.1 of Article IX gave the Secretary-General the power to terminate the appointment of staff. In the case of staff other than permanent appointees or staff on fixed-term appointments, the Secretary-General could at any time terminate the appointment if, in his or her opinion, such action would be in the best interests of the United Nations.

44. Chapter IX set out the rules for the terminations referred to in Article IX. These rules contained a definition of termination which materially reads:

A termination within the meaning of the Staff Regulations is a separation from service initiated by the Secretary-General, other than retirement... or summary dismissal for serious misconduct.

45. The only types of termination included in Chapter IX are “abolition of posts and reduction of staff”. “Resignation”, “retirement” and “expiration of fixed-term appointments” are not regarded as termination for the purposes of Chapter IX.

46. Article X was headed “Disciplinary Measures”. Staff regulation 10.2 enabled the Secretary-General to impose disciplinary measures on staff members whose conduct was unsatisfactory. The following Chapter X contained disciplinary measures and procedures. It defined misconduct and set out the procedure to be followed in disciplinary cases.

47. The scheme of the rules was therefore that Article IX and its corresponding Chapter provided the powers and procedures for the termination of staff where there was an abolition of posts or a need for reduction of staff. Other terminations for reasons of discipline were governed by Article X and its corresponding Chapter of procedures.

48. The specific rules for termination of 300-series appointments were found in the 300 series of the Staff Rules. These were to be read in conjunction with the Staff Regulations. Termination of 300-series appointments could be by an administrative decision under former staff rule 309.2 or a disciplinary measure under former staff rule 310.1 (set out below). Each of these rules referred to the Secretary-General as the decision maker. The administration of the Staff Regulations and Staff Rules is set out in ST/AI/234/Rev.1. This does not expressly refer to the delegation of authority for 300 series. It provides that termination under staff regulation 9.1 is a matter reserved to the Secretary-General, with exceptions. The authority to terminate as a result of disciplinary measures is not an exception and has not been delegated by ST/AI/234/Rev.1. That power is reserved to the Secretary-General.

49. The selection process in the present case was conducted on the basis of a policy adopted and administered by UNOG. The termination resulted from the application of that policy and was carried out without reference to the Secretary-General. If the termination of the applicant were of the type specified in staff regulation 9.1, i.e., abolition of posts and reduction of staff, the power lay with UNOG, otherwise it was reserved to the Secretary-General. For reasons discussed below, I find that the termination was a disciplinary measure and only the Secretary-General had the power to make the decision. It was therefore unlawful.

**Issue No. 3. Was the evidence relied on not to select the applicant for the post for which he had applied and to terminate his employment gathered in a fair and reasonable manner?**

50. The applicant submitted that the evidence was not gathered in a fair and reasonable manner because when the applicant was invited to be interviewed for the post for which he had applied, he was not told that his suitability for his usual short-term post was also being considered.

51. The subsequent reasons for termination, including that he had lied to the panel and given false information, amounted to allegations of misconduct. He

should have been given notice of these allegations and the procedure for termination invoked, including referral to the Joint Disciplinary Committee.

52. It was further submitted for the applicant that there were deficiencies in the findings of the panel because of the manner in which it was conducted. These deficiencies included making no enquiries outside of the interview to establish the correctness of what the applicant had told the panel, failing to tell the applicant of the serious concerns they had about his integrity, deciding he was liar without substantiating the facts and acting on assumptions about his military career rather than on evidence. This amounted to a breach of the applicant's right to a full and fair consideration.

53. The respondent submitted that this was a competency-based interview, that integrity is a core competency and if the panel had serious doubts about a candidate, it had the right to express those doubts when deciding to select for a position. It was noted that the panel also had doubts about the applicant's client orientation and technical knowledge.

54. The respondent further submitted that the finding of lack of integrity was not sufficient to justify disciplinary proceedings.

### **Consideration**

55. The nature of the action taken against the applicant dictates what procedure should have been followed. If it was a disciplinary measure, then the Staff Rules dictate the procedure.

56. Former staff rule 309.2 gave the Secretary-General a discretionary authority to terminate a short-term appointment. This was in the nature of an administrative rather than a disciplinary action:

(a) A termination within the meaning of the Staff Regulations is a separation from service initiated by the Secretary-General, other than summary dismissal for serious misconduct.

(b) The appointment of a staff member appointed under these Rules may be terminated at any time if, in the Secretary-General's opinion, such action would be in the interest of the United Nations.

57. Terminations under staff rule 309.2 were for the same purposes as those in Article IX and Chapter IX, i.e., where the requirements of the UN system mean that there is no longer a position available for the employee. There is no pejorative aspect in such a termination; it is an organisational decision or, as stated in staff regulation 9.3, because of the “necessity of the service”. This is consistent with the lack of any due process protections for employees in Chapter IX or staff rule 309.2. The procedure does not require adverse findings against an employee before he or she can be terminated under this article.

58. On the other hand, separation as a disciplinary measure was governed by former staff rule 310.1. The relevant parts of that rule are:

(a) 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 10.1, leading to the institution of disciplinary proceedings and the imposition of disciplinary measures for misconduct...

(c) In any case involving possible disciplinary action, the Secretary-General may refer the matter to a standing Joint Disciplinary Committee or may establish, on an ad hoc basis, machinery to advise him before any decision is taken.

(d) No disciplinary proceedings may be instituted against a staff member unless he or she has been notified, in writing, of the allegations against him or her and of the right to seek the assistance of counsel in his or her defence at his or her own expense, and has been given a reasonable opportunity to respond to those allegations.

(e) Disciplinary measures under these Rules may take one or more of the following forms:

- (i) Written censure;
- (ii) Suspension without pay;
- (iii) Fine;
- (iv) Separation from service, with or without notice or compensation in lieu of notice;
- (v) Summary dismissal.

59. The separation of the applicant was not done for organisational necessity and it was not done because of the expiry of the applicant’s contract. At the time

of his separation, the applicant was employed on a contract which was understood by him to be a short-term contract. It was not, however, in writing and was therefore of indeterminate length. The applicant had not been given a written contract to sign and no end date for the contract had been mutually agreed with him before or after he began work following the expiry of his last contract on 17 November 2005. He was therefore not separated because of the expiry of his short-term contract. The notice required for termination of a short-term contract was not given. To this extent, his separation was not an administrative termination of his short-term contract under former staff rule 309.2.

60. I find that the termination of the applicant had the form and substance of a disciplinary measure. First, the applicant was given no notice such as he would have been entitled to if it were a termination under former staff rule 309.2 termination. Second, the main reason given for the applicant's permanent separation from service was that he lacked competence and the core value of integrity required of a UN staff member. This was an adverse and prejudicial finding against the applicant. The person who made this decision believed that the applicant had lied about at least on two matters in his interview for the G-3 position. It is clear from the evidence that as a result of the selection process, it had been decided that he did not meet the standards of an international civil servant.

61. I do not accept the respondent's submission that the finding of lack of integrity was not sufficient to justify disciplinary proceedings. The interview panel recommended that he should not be further employed by the UN because of lack of integrity, which is a fundamental requirement of an international civil servant.

62. I conclude that whatever action the administration intended to take against the applicant, the termination was in effect a disciplinary measure which resulted in either separation from service without notice or compensation (former staff rule 310.1 (e) (iv)) or a summary dismissal (former staff rule 310.1 (e) (v)). He was alleged to have failed to comply with his obligations as a UN staff member and did not observe the required standards of conduct. These are serious and

damaging allegations which were acted on to the detriment of the applicant. It led to the loss of his UN career, albeit one performed on short-term contracts.

63. While the Administration has a broad discretion to determine what action is to be taken against a staff member in a specific case, such discretion is limited by the Staff Rules. If the Administration decides to take a disciplinary measure against a staff member, then the rules require that certain basic requirements are met: notice in writing of the allegation, the right to seek the assistance of counsel and a reasonable opportunity to respond to the allegations. This was confirmed in *D'Hooge* (Judgment UNDT/2010/044). If these requirements are not met, then the decision is unlawful.

64. If the interviews of the applicant were solely for the purpose of deciding whether to select him for the position for which he had applied, then the procedure would have been fair and reasonable. The constitution of the panel, the use of an independent expert to participate in the process, the transparent and thorough procedure and the willingness of the panel to give the applicant a second interview are all indicators of a fair selection process. However, the purpose for which the information and findings of the interview panel were used went beyond the mandate of the interview panel. It was not a disciplinary body, yet its findings and recommendations were used to justify the termination of the applicant's employment with the UN.

65. In this case, the decision was made that not only would his current contract not be renewed, but that he was not fit for further service with the UN because he lacked integrity. Although this amounted to a disciplinary measure, the applicant received no written notice of the allegation, no advice of his right to seek the assistance of counsel and no opportunity to respond to the allegations that related to the termination. In particular, his attempt to give the interview panel documentary evidence of his former employment was rejected. He did not know he was to be separated from the UN until the day it happened. Until then, he believed that he was only in jeopardy in relation to his application for the G-3 position.



66. Because the applicant had no notice that his continuing employment by the UN was in jeopardy as a result of the interviews and was not afforded the due process rights contained in former Staff Rule 310.1 (d), I conclude that the evidence used to justify his separation was not gathered in a fair and reasonable manner.

67. The disciplinary measure had the detrimental result of abruptly ending the applicant's otherwise unblemished six-year employment and effectively precluded him from future employment with the UN.

### **Conclusion**

68. In relation to issues number two and three, I conclude that the separation of the applicant was a disciplinary action which was unlawful in two respects: the decision was made without proper delegated authority and the process was in violation of the rules governing separation as a disciplinary measure.

### **Issue No. 4: Compensation**

69. The applicant seeks compensation under a number of heads. Of those the matters which are potentially compensable are:

- a. The unlawful termination of his contract;
- b. The violation of his right to due process under former staff rule 310.1 (d);
- c. The violation of his right to be given one week's notice of termination of his contract under former staff rule 309.3.

70. The applicant submits that the respondent's breach of the applicant's right to due process (including making mistakes about the facts) resulted in the unlawful termination of the applicant's employment and negatively impacted his future career opportunities. He seeks compensation for the breach of process, for the injury to his professional reputation and future career prospects, and for the moral injuries he has suffered as a result of the unlawful termination of his contract.

71. The respondent's argument is that the actions taken against the applicant, including both non appointment and separation, were based on valid reasons which were justified on the basis of the applicant's performance at interview and in the psychological tests. It is also submitted that the applicant had no expectancy of advancement in his career while working under a short-term contract and is therefore not entitled to any more compensation than that already awarded by the Secretary-General.

### **Considerations**

72. Compensation may be awarded under the two heads in article 10, paragraph 5, of the UNDT statute.

73. First, under article 10 (5) (a) as the applicant does not seek rescission of the administrative decision or specific performance, he is entitled to compensation for the notice that he was denied. Although he was summarily dismissed, this was unlawful.

74. The Staff Rules legislate for notice in cases of termination of short-term contracts as follows:

#### Former staff rule 309.3

(a) Staff appointed under these Rules whose contracts are to be terminated prior to the specified expiration date shall be given not less than one week's written notice in the case of locally recruited staff members and two week's written notice in the case of non-locally recruited staff members, or as otherwise provided in the letter of appointment.

(b) In lieu of the notice period, the Secretary-General may authorize compensation equivalent to salary and applicable allowances corresponding to the relevant notice period, at the rate in effect on the last day of service.

#### Former staff rule 309.4

In accordance with paragraph (e) of annex III to the Staff Regulations, staff members appointed under these Rules shall not be paid a termination indemnity unless such payment is specified in the letter of appointment.

75. However, none of these provisions apply in this case. The applicant's contract did not have a specified expiration date and there was no letter of appointment. In the absence of any end point for the short-term contract, the period of notice to which the applicant was entitled can only be calculated in terms of what would in all the circumstances of the case be considered reasonable. I conclude that a reasonable period of notice to the applicant that his employment would end was six weeks, that is from the date he was told of the termination to the end of March 2006.

76. The second head of damages is for non-material harm caused to the applicant as the result of the unlawful separation. This must be proportionate to the harm caused to the applicant.

77. I accept the respondent's submission that the applicant had no expectancy of career advancement while working under a short-term contract but until the finding that there was reason to separate him permanently from the UN, he remained available for engagement on the short-term basis that he was accustomed to. He therefore was deprived of the opportunity to be considered for such further short-term contracts that were still available. He was obliged to look outside the UN for employment and this was made difficult because of the manner of his separation from the UN. He had had adverse findings made against him without the benefit of the protections afforded by the disciplinary process in the rules.

78. The relevant considerations are, on the one hand, the short-term nature of the applicant's work at the UN and therefore lack of expectancy of renewal, balanced against the number of years he had been employed, the shock of the summary termination and the difficulties he encountered in obtaining alternative work because of the manner of his separation. The latter inevitably gave rise to suspicions about his suitability and thwarted his efforts.

79. The fact that the termination was also unlawful because it was carried out by the wrong person did not add to the harm caused to the applicant by the violation of due process.

80. In all the circumstances, the applicant is awarded the equivalent of one year's net base salary calculated at the rate of payment at the date of his termination of employment.

### **Conclusion**

81. In view of the foregoing, the Tribunal DECIDES:

1. The application is successful;
2. The applicant is awarded six weeks' payment in lieu of notice minus the one week's notice he has already received;
3. The applicant is further awarded the equivalent of one year's net base salary as at 9 February 2006 minus any compensation awarded by the Secretary-General which he has already received;
4. Both payments are to be based on the applicant's net base salary at the time of his separation.

*(Signed)*

Judge Coral Shaw

Dated this 22<sup>nd</sup> day of July 2010

Entered in the Register on this 22<sup>nd</sup> day of July 2010

*(Signed)*

Víctor Rodríguez, Registrar, Geneva