
Case No.: UNDT/NY/2010/037/
UNAT/1693

Judgment No. UNDT/2011/115

Date: 27 June 2011



Introduction

1.

- f. Whether the decision to suspend the Applicant from duty with full pay pending disciplinary proceedings under former staff rule 110.2 and ST/AI/371, sec. 4, was proper. The Tribunal notes that the suspension was not imposed as a special leave with full pay ("SLWFP") under former staff rule 105.2(a)(i), although the Respondent in this closing statement and the Joint Disciplinary Committee ("JDC") in its Report No. 216 refer to the suspension as SLWFP;
- g. Whether the disciplinary proceedings were improperly delayed;
- h. Whether it was proper to maintain the suspension of the Applicant while the disciplinary case against him was pending;
- i. Whether it was proper not to return the Applicant to his former job with the Canine Unit after the disciplinary case against him had been dismissed;
- j. Whether it was proper not to return Buddy to the Applicant after the disciplinary case against him had been dismissed ; and
- k. What compensation is owing, if any, to the Applicant for damages.

Facts

3. The following chronology is based mainly on the outline of facts contained in the undated Report No. 216 of the JDC, which the parties concurred in their jointly-signed 14 June 2010 submission, on the parties' written submissions to the

including the Applicant, were trained by the New York State Police over a 13-26 week period of time. In addition to this specialised training, the handlers were provided with the United Nations Security Service Canine Operations Manual (“the Canine Manual”), which was submitted in evidence by the Respondent and which was based on an equivalent New York State Police Canine Unit Manual. The Canine Manual includes a number of provisions relating, inter alia, to the relationship between the dog handler and the working dog, and was given to the handlers further guidance on how to handle their dogs. At the 23 March 2011 substantive hearing, the Applicant acknowledged that he had been given a copy of the New York State Police Canine Unit Manual when he was trained as a handler and that he knew the contents of this manual.

5. For working dogs assigned to them, canine handlers are required to care for the dogs in their private homes and to transport them to work each day. Testimony at the substantive hearing by Mr. Bruno Henn, Chief of the Division of Headquarters Security and Safety & Services, DSS, was that the dogs are paired with their handlers and that the dog handler unit was considered a “team”. Handlers have their dogs under their control and care at all times, unless the handler is on leave or the dog is sick. For this reason, dog handlers are given additional monthly compensation to cover incidental costs incurred. The selection of dog handlers is carefully monitored by DSS to ensure that dog handlers and their families are capable of fulfilling this demanding role and are prepared to assume its special responsibilities.

6. The Applicant joined the service of the Organization in September 1989 as a Security Officer. In February 2004, the Applicant was assigned as a dog handler within the DSS Canine Unit, and was appointed as a “team leader”. The Applicant was teamed up with Buddy. Effective 1 September 2006, the Applicant was granted a permanent appointment, and was promoted to the S-4 level on 1 December 2006.

7. On or about 3 July 2007, some of the other dog handlers made a report to the DSS management and alleged that the Applicant had conducted himself in an improper manner in connection with his service as a member and leader of the Canine Unit, including that he had physically abused Buddy. According to Mr. Henn, upon receipt of such an allegation (although the situation had never occurred before in the DSS Canine Unit), it would be normal working procedure to separate the dog from the handler pending the outcome of an internal DSS investigation. Mr. Henn testified that such course of action is "absolutely prudent" and this was how similar instances had been dealt with when he was working with the German police force. Furthermore, had Buddy not been separated from the Applicant, this could have affected future donations of dogs to the United Nations from the New York State Police. Mr. Henn made clear that this separation of the dog from the handler at this point in time did not constitute a final decision on the issue.

8. Mr. Henn also testified that, once a working dog has been separated from the dog handler, it also is standard practice for the handler to be reassigned to another unit since, without a dog partner, the handler would not be able to fulfill his/her responsibilities of the Canine Unit. This statement is corroborated by the standard operating procedures for DSS, Nos. 10 ("Unit") and 25 ("C. 8.8.1 alleged that the Ap

I have examined 'Buddy

conclusion. It is my opinion that Buddy suffered blunt trauma to both the thoracic and abdominal cavities. It is my interpretation that the ultrasound shows contusions to the spleen and right cranial lung lobe.

13.

17. On 12 September 2007, the investigation report was completed which, inter alia, concluded that, “[t]he allegation against [the Applicant] of having physically abused the dog ‘Buddy’ is substantiated”.

18. Following review of the IAU Report by DSS management, the Under-Secretary-General DSS (“USG/DSS”) forwarded the report and supporting documentation to the Assistant Secretary-General (“ASG”) of OHRM, in accordance with ST/AI/371, sec. 3, on the basis that the preliminary investigation appeared to indicate that the allegations of misconduct were well-founded and that the matter “is to be pursued” under ST/AI/371, sec. 6., in accordance with ST/AI/371, sec. 4. The USG/DSS recommended that the Applicant be suspended for the following reasons, as set forth in his 2 October 2007 memorandum:

The department is also concerned about the ability of [the Applicant] to fulfil the mandate of the Division of Headquarters Security and Safety Services which is to protect staff, delegates, visiting dignitaries and other visitors to the United Nations premises, to prevent damage to United Nations property and to provide safe and secure facilities.

19. In a 5 October 2007 memorandum, Ms. Georgette Miller, the Director, Division for Organizational Development, OHRM, informed the Applicant that he was being charged with misconduct for physically abusing Buddy, and that he was being suspended from duty with full pay. Ms. Miller’s memorandum stated, inter alia, as follows:

...

21. On the basis of the evidence and findings contained in the investigation report and supporting documentation, you are hereby charged with physically abusing your canine partner, Buddy. Your alleged conduct is in violation of the guidelines and procedures of the Canine Unit, and your obligations as an international civil servant.

22. If established, your behaviour would constitute a violation of staff regulation 1.2 [subsection (s), (f) and (q) cited].

23. In addition, if established, your behaviour would also constitute a violation of [former staff rule 101.2(b) and (d)].

(q) Staff members ... shall exercise reasonable care when utilizing ... property and assets [of the Organization].

...

29. Former staff rule 101.2, *inter alia*, stated as follows:

...

(b) Staff members shall follow the conditions and instructions properly issued by the Secretary-General and their supervisors.

...

(d) Any form of ... physical or verbal abuse at the workplace or in connection with work, is prohibited.

...

30. Former staff rule 110.1 stated as follows:

Misconduct

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 10.2, leading to the institution of disciplinary proceedings and the imposition of disciplinary measures for misconduct.

31. Former staff rule 110.2 stated as follows:

Suspension during investigation and disciplinary proceedings

(a) If a charge of misconduct is made against a staff member and the Secretary-General so decides, the staff member may be suspended from duty during the investigation and pending completion of disciplinary proceedings for a period which should normally not exceed three months. Such suspension shall be with pay unless, in exceptional circumstances, the Secretary-General decides that suspension without pay is appropriate. The suspension shall be without prejudice to the rights of the staff member and shall not constitute a disciplinary measure.

(b) A staff member suspended pursuant to paragraph (a) shall be given a written statement of the reason for the suspension and its probable duration.

32. Former staff rule 110.4 stated as follows:

Due process

(a) No disciplinary proceedings may be instituted against a staff member unless he or she has been notified of the allegations against him or her, as well as of the right to seek the assistance in his or her defence of another staff member or retired staff member, and has been given a reasonable opportunity to respond to those allegations.

(b) No staff member shall be subjected to disciplinary measures until the matter has been referred to a Joint Disciplinary Committee for advice as to what measures, if any, are appropriate, except that no such advice shall be required:

(i) If referral to the Joint Disciplinary Committee is waived by mutual agreement of the staff member concerned and the Secretary-General;

(ii) In respect of summary dismissal imposed by the Secretary-General in cases where the seriousness of the misconduct warrants immediate separation from service.

33. The relevant provision from ST/AI/371 (as applicable at the time) are the following:

II. INITIAL INVESTIGATION AND FACT-FINDING

2. Where there is reason to believe that a staff member has engaged in unsatisfactory conduct for which a disciplinary measure may be imposed, the head of office or responsible officer shall undertake a preliminary investigation ... Conduct for which disciplinary measures may be imposed includes, but is not limited to:

(a) Acts or omissions in conflict with the general obligations of staff members set forth in article 1 of the Staff Regulations and the rules and instructions implementing it;

...

3. If the preliminary investigation appears to indicate that the report of misconduct is well founded, the head of office or responsible officer should immediately report the matter to the Assistant Secretary-General, Office of Human Resources Management, giving a full account of the facts that are known and attaching documentary evidence, such as cheques, invoices, administrative forms, signed

written statements by witnesses or any other document or record relevant to the alleged misconduct.

4. If the conduct appears to be of such a nature and of such gravity that suspension may be warranted, the head of office or responsible official shall make a recommendation to that effect, giving reasons. As a general principle, suspension may be contemplated if the conduct in question might pose a danger to other staff members or to the Organization, or if there is a risk of evidence being destroyed or concealed and if redeployment is not feasible.

5. On the basis of the evidence presented, the Assistant Secretary-General, on behalf of the Secretary-General, shall decide whether the matter should be pursued, and, if so, whether suspension is warranted. Suspension under staff rule 110.2 (a) is normally with pay, unless the Secretary-General decides that exceptional circumstances warrant suspension without pay, in both cases without prejudice to the staff member's rights.

6. If the case is to be pursued, the appropriate official in the administration at headquarters duty stations, and the head of office or mission at duty stations away from headquarters, shall:

is unable to comply with the deadline. If no response is submitted within the time-limit, the matter shall nevertheless proceed.

8. The entire dossier is then submitted to the Assistant Secretary-General, Office of Human Resources Management. It shall consist of the documentation listed under sub-paragraphs 6 (a), (b) and (c) above, the staff member's reply and the evidence, if any, that he or she has produced. In cases arising away from New York, the responsible official shall promptly forward the dossier to the Assistant Secretary-General, Office of Human Resources Management.

9. On the basis of the entire dossier, the Assistant Secretary-General, Office of Human Resources Management, shall proceed as follows:

(a) Decide that the case should be closed, and the staff member should be immediately notified that the charges have been dropped and that no further action will be taken. This is without prejudice, where appropriate to the measures indicated in staff rule 110.3 (b) (i) and (ii); or

(b) Should the facts appear to indicate that misconduct has occurred, refer the matter to a joint disciplinary committee for advice; or

(c) Should the evidence clearly indicate that misconduct has occurred, and that the seriousness of the misconduct warrants immediate separation from service, recommend to the Secretary-General that the staff member be summarily dismissed. The decision will be taken by or on behalf of the Secretary-General.

some of his legal arguments appear self-contradictory. In essence, the closing statement is not of the quality that must be expected from a professional private attorney appearing before the Tribunal (even if acting *pro bono* as the Counsel for the Applicant indicates is his status in the present case). In the following summary of the Applicant's submissions, the Tribunal organised and rephrased the Applicant's closing statement, in an attempt to give them relevance within the context of the present case. Based thereon, the Applicant's principal contentions may be summarised as follows:

- a. Throughout the entire process, the Respondent failed to observe the fundamental safeguards of presumption of innocence, due process and fairness; these principles have been affirmed by the United Nations Appeals

staff counsel, for which reason the first interview was cancelled, but the second interview was called with such short notice that it was not possible for the Applicant to arrange for such counsel to be present; and

- iv. Investigators must verify the accuracy of adverse allegations filed by staff, and a proper case must be established based on such facts and not anonymous tips;
- c. The IAU standard operating procedures under which the investigation of the Applicant was carried out were not in force at the relevant time;
- d. In any event, it was improper for the IAU to conduct an investigation of the Applicant according to its standard operating procedures, since these did not carry any legal authority:
 - i. None of the IAU standard operating procedures had been approved by the Staff Management Coordination Committee, the Office of Legal Affairs or the Office of the Secretary-General. Rather, “[t]hey are the products of some individual minds, who will change them from time to time, and from year to year, without any control by the competent UN authority ... [and] promulgation of binding issuances must be made only by authorized officials in its hierarchy and in accordance with prescribed procedures [in the present case, ST/SGB/1997/1]”;
 - ii. The standard operating procedures allowed the IAU investigators to go on “fishing expeditions”, where neither the allegations nor the supporting evidence were disclosed to the staff;

- e. ST/AI/371 should not be applied in disciplinary matters, as it contains major due process deficiencies, and does not render General Assembly resolution 48/218B (Review of the efficiency of the administrative and financial functioning of the United Nations) inapplicable, particularly the safeguards of fairness and due process in any investigation (Counsel fails to specify which provisions of the General Assembly resolution would be breached by ST/AI/371);
- f. Under the IAU standard operating procedures (see, e.g, paras. 1.2.2, 1.9, 2.3 and 3.2), a Security Officer may hold either a contract of the United Nations Development Programme (“UNDP”) or of the United Nations Secretariat—disciplinary investigations should therefore be governed by the UNDP’s guidelines on the application of article X of the Staff Regulations and chapter X of the Staff Rules (UNDP/ADM/97/17 of 12 March 1997, “Accountability, disciplinary measures and procedures”), since those guidelines are more recent and precise than ST/AI/371;
- g. The factual conclusions of the AU Report were based on the balance of probabilities, which is an inappropriately low evidentiary standard in a case such as the present—under recent jurisprudence (Counsel does not cite any cases), the investigation must apply at least a standard of preponderance of evidence when establishing facts;
- h. Ms. Zhang did not have proper knowledge of the United Nations Universal Covenant on Civil Rights (sic) and her general training was limited to that of the Chinese Police Academy;
- i. Ms. Zhang was biased against the Applicant, which was proven by:
- i. Her reliance on Security Officer, Ms. Ivette Garcia’s testimony before the JDC, depriving the Applicant of the benefit of doubt;

- ii. Her inability to explain that many other dogs besides Buddy also suffered injuries;
 - iii. Her only being able to name ~~the~~ ~~one~~ out of allegedly nine people who accused the Applicant of ~~dog~~ abuse (in fact, according to the Applicant, only two or three persons had done so); and
 - iv. Her inability to distinguish between firsthand and hearsay evidence;
- j. The testimony of Mr. Henn (Ms Zhang's supervisor) should be disregarded, since it was based on ~~her~~ ~~his~~ and his recollection of the events was inadequate;
- k. In his testimony, Mr. Henn, who ~~end~~ endorsed the IAU Report of Ms. Zhang, affirmed that he never reviewed the evidence which prompted the initial disciplinary actions against ~~the~~ Applicant (i.e., the Applicant's suspension from DSS Canine Unit ~~and~~ Buddy being sent to the veterinarian examinations), and that Mr. Henn simply signed the report submitted to him;
- l. According to Mr. Henn, when other dog handlers from the DSS Canine Unit were suspended from ~~work~~ they all got their dogs back, but Mr. Henn did not know what had happened to Buddy;
- m. Mismanagement of a backlog of disciplinary cases at the United Nations, as cited by the Respondent, is not an appropriate excuse for suspending the Applicant for 20 months;
- n. After winning his case before the ~~OD~~ and obtaining the lifting of his suspension, the Applicant never received any apology from the Respondent for his 20 months' suspension, his ~~loss~~ ~~of~~ ~~services~~ ~~and~~ ~~loss~~ of Buddy or for the protracted proceedings;

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it may not apply the UNDP guidelines to the present case. At most such guidelines may be of assistance in interpreting those provisions of ST/AI/371 that might be found ambiguous or lacking.

Was it proper for the Organization to initiate a preliminary investigation against the Applicant under sec. 2 of ST/AI/371?

42. The standard for determining whether a preliminary investigation is to be undertaken is defined in sec. 2 of ST/AI/371 “[w]here there is reason to believe that a staff member has engaged in unsatisfactory conduct for which a disciplinary measure may be imposed”. In other words to initiate such investigation:

- a. The alleged behaviour must amount to possible “unsatisfactory conduct”, i.e., misconduct under former staff rule 110.1, and
- b. There must be “reason to believe” that the staff member in question behaved in such a way.

Possible misconduct

43. As for the legal status of the Canine Manual, it is only reasonable to conclude that it formed part of the Applicant’s contract of employment as a dog handler; at minimum, it may be viewed as a binding instruction from a supervisor in accordance former staff rule 101.2(b). At the substantive hearing, the Applicant suggested that he had not been properly informed about the contents of the Canine Manual. However, given the Applicant’s intensive training as a dog handler, where the handlers are taught according to the Canine Manual and given the Canine Manual’s easy availability, the Tribunal is not convinced by the Applicant’s argument.

44. It explicitly follows from the Canine Manual that the working “[d]ogs are the

45. By abusing a working dog, the dog handler therefore mishandling property of the United Nations, in violation of staff regulation 1.2(q), by not exercising “reasonable care when utilizing ... property and assets” of the Organization. Under former staff rule 110.1, if such abuse amounted to “unsatisfactory conduct”, it could lead to disciplinary proceedings.

46. Furthermore, it follows from the Canine Manual that the dog handler must “[p]ossess a sincere interest in animals and animal behavior” and is to “[e]nsure the [working] dog will not aggravate any health problems” (see paras. VI.3 and VI.8). By abusing the working dog, the handler would therefore clearly be in breach of his responsibilities as defined in the Canine Manual.

47. Additionally, abusing a working dog would clearly be a violation of the obligations that United Nations staff members are to uphold as international civil servants under staff regulation 1.2(b), (f) and (q). Finally, former staff rule 101.2(d) prohibits, “Any form of ... physical or verbal abuse at the workplace or in connection with work”.

48. The Tribunal finds that, if the facts were to be proven, the Applicant’s alleged abuse of Buddy would have constituted possible misconduct.

Reason to believe

49. Under ST/AI/371, sec. 2, the crucial question for the decision-maker is to determine whether there is “reason to believe” that a staff member has engaged in unsatisfactory conduct for which a disciplinary measure may be imposed. As stated in Abboud UNDT/2010/001, para. 4, the “reason to believe” must be more than mere speculation or suspicion; it must be reasonable and must be based on facts sufficiently well-founded, although not necessarily proven, to rationally incline the mind of an objective and reasonable decision-maker to the belief that the staff member has engaged in the relevant conduct.

54. As for the Applicant's general criticisms of the proceedings against him (see para. 35(a) above), he has entirely failed to substantiate any of these contentions, which therefore must be dismissed.

55. With regard to the Applicant's more specific points regarding the preliminary investigations (see para. 35(b) above), Counsel appears to misunderstand that most of the due process rights to which he refers ~~are~~ ~~not~~ in an applicant after it has been decided to file charges against charges her/him and not already at the stage of the preliminary investigation, which is also reflected in former staff rule 110.4 and ST/AI/371, sec. 6 (see also Zerezghi UNDT/2010/122 and Yapa and Zoughy

recent years throughout developed systems, under the title of due process and otherwise known as the principle of no punishment sine processu. That importance has been repeatedly highlighted in the various decisions of appropriate organs of the United Nations system and has been further emphasized developed by the case law of this Tribunal. ...

V. In conclusion, the Tribunal is of the opinion that the assurances of due process and fairness outlined by the General Assembly ... mean that, as soon as a person is identified, or reasonably concludes that he has been identified, as a possible wrongdoer in any investigation procedure and at any stage, he has the right to invoke due process with everything that this guarantees. Moreover, the Tribunal finds that there is a general principle of law according to which, in modern times, it is simply intolerable for a person to be asked to collaborate in procedures which are moving contrary to his interests sine processu.

58. However, nothing in the present case suggests that the Applicant was denied such a right and he was later properly informed of his right to such assistance in connection with him being formally charged (see ST/AI/371, sec. 6(c)).

59. Finally, the Applicant has not provided any reliable evidence that the preliminary investigation was otherwise inadequate; in particular, he failed to substantiate that Ms. Zhang was not properly qualified as an investigator and/or was biased against the Applicant. His contentions in this regard therefore appear entirely speculative and must be dismissed.

60. The Tribunal finds that the Respondent did not commit any due process violations in connection with the preliminary investigation and that the preliminary investigation under ST/AI/371 was properly conducted.

Was it proper to remove Buddy from the Applicant?

61. Since working dogs, such as Buddy, are United Nations' property, the Organization, as their owner, has the full right to make decisions regarding them, including whether they are to be removed from a dog handler. Nevertheless, as with all decisions, the Organization has an obligation to make decisions that are proper and

in good faith (Utkina UNDT/2009/096 and James UNDT/2009/025). The discretion of the Secretary-General is not unfettered (Larkin UNDT/2010/108 and Nogueira UNDT/2009/088).

62. According to Mr. Henn's testimony, the dog handler does not her/himself choose the working dog that he/she wants to work with; the pairing of the handler with the dog is undertaken by the instructors, which consider not only matching the personalities of the handler and the dog, but also take into account outside factors such as the handler's family (see also paras. VI and VII of the ~~the~~ ~~CA~~ Manual). After being paired up, the dog resides with the handler, who takes primary responsibility for the dog and the dog only leaves her/his presence if s/he goes on vacation or if the dog gets sick (see also paras. 4(c) of the ~~the~~ ~~CA~~ Manual).

63. Inevitably, a close personal bond therefore develops between the dog handler, her/his family and the working dog, which is also the underlying philosophy about the handler and dog being a "team". When separating a dog from a handler, aside from taking into account its own priorities and objectives as the owner of the dog, the Organization must therefore also consider the interests of the handler and her/his family, as well as the dog. In his oral testimony, the Applicant also emphasized that the main objective of his appeal was to get ~~the~~ ~~CA~~ back to stay with his family.

64. As stated above, the Applicant has ~~also~~ ~~stated~~ that the allegations of dog abuse were made in retaliation for the Applicant's reporting that these colleagues had received inappropriate gifts from some ~~of~~ ~~the~~ Nations vendors. The Applicant also stated that the ~~US~~ ~~S~~ ~~lt~~ ~~/~~ ~~DSS~~ ~~as~~ ~~to~~ ~~ho~~ ~~2~~ ~~1~~ ~~Tf~~ ~~(~~ ~~)~~ ~~Tj~~ ~~/~~ ~~TT0~~ ~~US~~ ~~S~~ ~~lt~~ ~~/~~ ~~DSS~~ ~~as~~ ~~tru~~ ~~/~~ ~~pf~~ ~~25~~ ~~0~~ ~~Td~~ ~~(~~ ~~a~~ ~~Td~~ ~~l~~ ~~lev~~ ~~Tco~~ ~~)~~ ~~sts~~ ~~e~~

Parker 2010-UNAT-012 and, e.g., also By ~~UNDT/2009/083~~ and Simmons UNDT/2011/085).

66. The Tribunal also finds that, as much as the Tribunal may be sympathetic to the emotional attachment ~~the~~ Applicant and his ~~family~~ felt towards Buddy, it was that

final decision of dismissing the charges as apparently taken by the Secretary-General (in conformity with ST/AI/371, sec. 22).

75. The Applicant has failed to substantiate any due process violations and nothing in the case record suggests that such breaches have occurred.

76. The Tribunal finds that the disciplinary proceedings against the Applicant were conducted according to appropriate due process standards as set forth in ST/AI/371.

Was the decision to suspend the Applicant from duty with full pay pending disciplinary proceedings under former staff rule 110.2 and ST/AI/371, sec. 4, proper?

77. While former staff rule 110.2 did not set any legal standard for when to suspend a staff member, under ST/AI/371, sec. 4, a suspension could be imposed upon a staff member following a preliminary investigation and had to involve

established the JDC and set forth ~~in~~ staff rules 110.6 and 110.7 the general provisions regarding the JDC co

might pose a danger to other staff members or to the Organization, or if there is a risk of evidence being destroyed or concealed and if redeployment is not feasible". The Applicant's alleged abuse of his working dog, Buddy, qualified as conduct for which suspension could be imposed.

84. The Applicant was suspended from duty only while the disciplinary process against him was pending, in conformity with ST/AI/371, sec. 6, and after the charges against the Applicant were dismissed the Applicant resumed his position with the Conference Platoon.

85. It could be questioned whether it was necessary to suspend the Applicant during the entire disciplinary proceedings and whether the Applicant could have resumed his work with the Conference Platoon earlier, since the misconduct charges related to his work with the DSS Canine Unit. However, given the serious nature and character of the misconduct accusations against him, particularly those concerning physical violence against the working dog, which could—at its highest—have resulted in his summary dismissal (see former staff rule 110.3(a)), it only seems reasonable that the suspension be maintained throughout the entire disciplinary proceedings. Further, the suspension in all respects met the requirements of ST/AI/371, and no basis exists for the Tribunal to question the Respondent's decision in this regard.

86. The Tribunal finds that it was proper to maintain the suspension of the Applicant while the disciplinary case against him was pending.

Was it proper not to return the Applicant to his former job with the Canine Unit after the disciplinary case against him had been dismissed?

87. When the Applicant returned to work after his suspension, he resumed his job with the Conference Platoon, to which he had been assigned pending the outcome of the investigation under ST/AI/371.

92. As already stated above, the Respondent as owner of Buddy, had the full right to make a decision regarding its canine working dog, assuming that the decision was properly taken. Before removing Buddy from the Applicant, the Organization took a number of considerations into account, including those of the Organization, of the Applicant and his family, and of Buddy itself. The same considerations would thus also apply if the Respondent were requested

What compensation is owing, if any, to the Applicant for damages?

96. The Tribunal, having rejected all the contentions made by the Applicant under the previous issues defined in the present case, finds that the Applicant is therefore not entitled to any compensation.

97. The Applicant also submits that the Respondent did not issue an apology to him for the dismissed disciplinary charges. While no such right to an apology is defined anywhere in the relevant legal instruments of the internal justice system of the United Nations, based on the fact that the disciplinary case against him eventually was dismissed, it could be argued that the Applicant implicitly is requesting compensation for the non-pecuniary losses he suffered from being charged with misconduct and suspended from work. It is noted that the Applicant does not appear to have suffered any pecuniary losses from this, since he returned, albeit to another unit, at the same level and step as when he was suspended (the additional remuneration he received as dog handler was to compensate him for his additional expenses for undertaking this task, and this therefore does not amount to a direct economic loss).

98. While the Tribunal, in some instances, could be amenable to such contention, it is still for the Applicant to substantiate the harm which he has actually suffered (see Antaki 2010-UNAT-096, para. 20). As to the type of damages that the Dispute Tribunal may award, in Antaki, para. 21, the Appeals Tribunal specified that compensation may be awarded “for actual pecuniary or economic loss, non-pecuniary damage, procedural violations, stress, and moral injury”. It further follows from the Statute of the Dispute Tribunal, art. 10.7, that the Tribunal “shall not award exemplary or punitive damages”.

99. In the present case, the Applicant has not been able to point to or demonstrate any sort of “non-pecuniary damage, procedural violations, stress, and moral injury” in connection with his being charged and suspended for possible misconduct, and the Tribunal is therefore left with no basis for an award of compensation.

100. The Tribunal finds that no compensation is owing to the Applicant.

Conclusion

101. The Tribunal finds that, given the grave nature of the allegations of dog abuse against the Applicant, it was proper for the Organization to initiate a preliminary investigation against the Applicant under sec. 2 of ST/AI/371.

102. The Tribunal finds that the Respondent did not commit any due process violations in connection with the preliminary investigation and that the preliminary investigation under ST/AI/371 was properly conducted.

103. The Tribunal finds that it was reasonable for the Organization to remove the working dog, Buddy, from the Applicant.

104. The Tribunal finds that the decision to transfer the Applicant to a unit other than the DSS Canine Unit was proper.

105. The Tribunal finds that the disciplinary proceedings against the Applicant were conducted according to appropriate due process standards as set forth in ST/AI/371.

106. The Tribunal finds that the decision to suspend the Applicant from duty with full pay pending disciplinary proceedings under former staff rule 110.2 and ST/AI/371, sec. 4, was proper, given the grave nature of the misconduct charge for abuse of a working dog in the Canine Unit.

107. The Tribunal finds that the disciplinary proceedings were not improperly delayed.

108. The Tribunal finds that it was proper to maintain the suspension of the Applicant while the disciplinary case against him was pending.

109. The Tribunal finds that it was proper not to return the Applicant to his former job with the Canine Unit after the disciplinary case against him had been dismissed.

110. The Tribunal finds that it was proper not to return the working dog, Buddy, to the Applicant after the disciplinary case against him had been dismissed.

111. The Tribunal finds that no compensation is owing to the Applicant.

112. Accordingly, the application is dismissed in its entirety.

(Signed)

Judge Marilyn J. Kaman

Dated this 27th day of June 2011

Entered in the Register on this 27th day of June 2011

(Signed)

Santiago Villalpando, Registrar, New York