Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pelé Fomété

POWELL

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Katya Melluish, OSLA

Counsel for Respondent:
Stephen Margetts, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant, a staff member of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo ("MONUSCO"), filed an application with the former United Nations Administrative Tribunal ("the former UN Administrative Tribunal") contesting the decision of the Secretary-General to impose on him the disciplinary measure of demotion for two years with no possibility of promotion during that period. As a result of the transitional measures related to the introduction of the then new system of administration of justice (ST/SGB/2009/11), the case was transferred from the former United Nations Administrative Tribunal to the United Nations Dispute Tribunal ("the Tribunal") on 1 January 2010.

Facts

2. The Applicant entered into service with the then United Nations Organization Mission in the Democratic Republic of the Congo ("MONUC") on 25 January 2002 as a Movement Control Assistant at the FS-5 level on an appointment of limited duration ("ALD") under the 300 series of the United Nations Staff Rules. Due to the disciplinary measure imposed by the Respondent, the Applicant was demoted to the FS-4 level on 5 September 2007.

3. In January 2004, the Applicant was appointed the Officer-in-Charge ("OIC") in the Movement Control Section ("MovCon") in Kisangani. On 22 November 2004, the Special Representative of the Secretary-General ("SRSG"), MONUC, convened a Headquarters Board of Inquiry ("BOI") to investigate and report on serious allegations of misconduct by the Applicant in Kisangani during March 2004. The BOI, which deliberated between 20 November and 23 December 2004, was given four incidents of allege

status as international civil servants" and to "not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations". The Board concluded that the Applicant be held accountable for serious misconduct in incidents relating to fourteen incidents of alleged misconduct, including an allegation of sexual exploitation of a casual worker.

5. With respect to the allegation of sexual exploitation of a casual worker, the BOI also concluded that there was enough "probable cause" to warrant further inquiry by the External Relations Office. The BOI then recommended, *inter alia*, that the then Personnel Management Support Section ("PMSS") within the Department of Peacekeeping Operations ("DPKO") be notified of the Applicant's misconduct and unsuitability for further duty with the Organization and its Agencies.

6. By a memorandum dated 9 February 2005, the Director of Administration ("DOA"), MONUC, transmitted the BOI report to the Chief of PMSS "to allow for disciplinary proceedings to be initiated in accordance with the findings of the BOI. Additionally, the DOA referred the allegation of sexual exploitation and abuse ("SEA") against the Applicant, to a MONUC SEA Investigation Team ("the SEA Investigation Team"). The SEA Investigation Team, which conducted its investigation in February 2005, interviewed four witnesses, reviewed the BOI's record of interview for the Applicant and examined excerpts from the BOI report. The SEA Investigation Team concluded in its Report[1] that the Applicant had a sexual relationship with a daily casual worker known as "Mary" and that despite her lack of professional experience he hired her for a position in MONUC's MovCon section. The SRSG/MONUC transmitted the Report of the SEA Investigation Team to the Under-Secretary-General ("USG")/DPKO on 26 February 2005 for appropriate action and possible "disciplinary measures".

7. On 9 March 2005, the Assistant Secretary-General ("ASG") for Peacekeeping Operations transmitted both the BOI Report and the report of the MONUC SEA Investigation Team to the ASG for Human Resources Management, recommending that "OHRM" (Office of Human Resources Management) initiate and expedite disciplinary proceedings against the Applicant".

[1] DPKO/089/KIS/2004.

daily casual worker did not amount to SEA within the definition of ST/SGB/2003/13 and recommended that the SEA component of this charge be dropped. However, a **majority of the JDC** ("the JDC Majority") found that the preponderance of the evidence suggested that the staff member had engaged in a sexual relationship with the daily casual worker and that as a result, he favoured her by actively seeking her transfer to MovCon. Consequently, the JDC Majority recommended that the staff member receive the disciplinary measure of a loss of two steps in grade for favouritism.

12. In a dissenting opinion, the **minority of the JDC** ("the JDC Minority") recommended that all charges against the Applicant be dropped and no sanction imposed. The JDC Minority opined that the Administration had not shown by a preponderance of "what was mostly contradictory evidence" that a sexual relationship existed between the Applicant and the daily casual worker. Accordingly, the JDC Minority remained "unconvinced that it was more likely than not that he showed favouritism".

13. By a letter dated 20 August 2007, the ASG/OHRM transmitted the JDC Report to the

demote him by one level with no possibility of promotion for two years. The Applicant was demoted to the FS-4 level on 5 September 2007.

15. The Applicant subsequently submitted the current application to the former UN Administrative Tribunal on 4 March 2008. The case was subsequently transferred from the former United Nations Administrative Tribunal to this Tribunal on 1 January 2010.

16. The Tribunal held an oral hearing in the matter from 14-16 September 2010.

Issues for determination:

17. The issues the Tribunal will examine in the present matter are as follows:

a. Whether the facts on which the discip

Respondent's submissions:

23. The Respondent submits that it is within the discretionary power of the Secretary-General to determine what behaviour constitutes misconduct, as well as the disciplinary measures to be imposed. Additionally, based on the evidence adduced by the JDC, the Respondent reasonably determined that the evidence supported the charge that the Applicant had committed misconduct by actively seeking the transfer of a daily casual worker with whom he was having an intimate relationship to MovCon. Lastly, the Respondent submits that staff regulation 1.2(g) clearly prohibited the Applicant from using his official position to favour the daily casual worker, admittedly his friend, and such conduct was prohibited irrespective of the specific nature (i.e. sexual or otherwise) of the Applicant's non-professional relationship with the daily casual worker.

Considerations

24. The Applicant was charged with the following:

a. Using his position and falsifying a Movement of Personnel (MOP) form so that his wife could travel with him on a MONUC cargo aircraft ("charge 1");

b. Using his position in MovCon to obtain transport for himself for personal reasons on a non-revenue maintenance flight to Nairobi, despite the fact that travelling on such flights was prohibited and was not co

in ST/SGB/2003/13 of an abusive or exploitative relationship and therefore recommended that the SEA component of this charge be dropped. However, the JDC Majority found that the preponderance of the evidence suggested that the staff member had engaged in a sexual relationship with Mary and that as a result, he had favoured her by actively seeking her transfer to MovCon.

26. The Secretary-General accepted the findings and conclusions of the JDC Majority but decided to impose the disciplinary measure of demotion with no possibility of promotion for two

MONUC Microwave Satellite Supervisor, and JB, a MONUC Warehouse Manager) who had shared a house with the Applicant in Kisangani. The SEA Investigation Team found that there was sufficient evidence to substantiate that between April and December 2004, the Applicant had had a sexual relationship with Mary, who was working under his supervision in MovCon. A review of the available evidence revealed the following:

31. Moidrag Kraljevic joined MONUC in May 2004. He spent one month in Kinshasa and was then posted to Kisangani. In September 2004, he moved into the house where the Applicant and GH were living. His room was "just across" the Applicant's room. According to Moidrag Kraljevic, between September 2004 and the end of the year, Mary used to come to their house very often. She visited the Applicant's room about 4-5 times a month and would spend the night in his room. He claimed that due to the thin walls in the house, when he was in his room he could hear the Applicant and Mary having sex in the Applicant's room. Moidrag Kraljevic claimed that he would see her in the morning after she had spent the night with the Applicant and that Mary

statement to the SEA Investigation Team was an incorrect interpretation and that the line at the bottom of the statement was added when the interviewer asked him towards the end of the interview whether he "thought" she was spending nights in the Applicant's room following his mentioning her coming to the house with food items. He explained that the addition and the initial were an error as he had reviewed the statement very quickly without thoroughly checking it for accuracy.

34. According to a summary of telephone interview included in the BOI report, FG, a Station Manager working for Pacific Architects and Engineers (PAE), told the BOI that he "[took] it that [Mary] was living with [the Applicant]. According to him, Mary was given the job at the airport because she was the Applicant's girlfriend. In his view, Mary "was the girlfriend first, not the other way around (became girlfriend after hiring)". He told the BOI that he saw Mary with the Applicant at the Riverside Inn a couple of times. He had contact with them only at work and did not associate with them socially.

35. According to a summary of telephone interview that was included in the BOI report, RR, a MONUC MovCon staff member, claimed that the Applicant had a Congolese girlfriend who was living with him and was the only female local staff in MovCon Kisangani. According to this summary, the Applicant got into trouble because he tried to get another local staff member fired so that his girlfriend could get a UN job.

36. In *Messinger* 2011-UNAT-123, the Appeals Tribunal held that:

> There is a distinction between the admissibility of evidence and the weight to be attached to such evidence. The Dispute Tribunal has a broad discretion to determine the admissibility of any evidence under Article 18(1) of its Rules of Procedure and the weight to be attached to such evidence. This Tribunal is also mindful that the Judge hearing the case has an appreciation of all of the issues for determination and the evidence before the UNDT. The fact that the Secretary-General indicated that he would not require Messinger's witnesses to be cross-examined on their statements did not mean that all of the evidence contained in the witness statements would be taken to be relevant to the matters in dispute or accorded full weight when assessed in light of the other evidence. At the hearing, Messinger chose to call only one of the witnesses who provided written statements. The weight to be attached to admitted evidence is within the discretion of the UNDT Judge and Messinger has failed to convince us of any

view, Mary may not have been telling the truth for fear of losing her job as a daily casual worker. The Tribunal notes however that JF did not specifically ask Mary whether she was lying to protect her job. JF appears to have assumed that this was the reason because she had interviewed other female daily casual workers, subsequent to the investigation in this case, in relation to allegations of SEA against other United Nations Personnel, who had denied the alleged sexual relationships for fear of losing their jobs. In the Tribunal's view, when dealing with such a serious allegation, an assumption is not a good enough basis from which to draw a conclusion. In the absence of evidence to the contrary, the Tribunal has no reason to rule that Mary denied the existence of a relationship with the Applicant due to the fear of losing her job.

44. The Applicant denied having a sexual or improper relationship with Mary. He explained that sometime in June 2004 the Staff Welfare Club was burned down during a period of extreme upheaval and disturbance in Eastern Congo. Subsequently, a decision was made to form a new Staff Welfare Committee and to build a new staff welfare facility in Kisangani. The Applicant became one of the founding members of the new Staff Welfare Committee and a new staff welfare facility ("the Riverside Inn") was built at the end of July/early August 2004. The new facility had a restaurant facility that necessitated the purchase of food items from the local market. The Applicant gave evidence that due to Mary's demonstrated in

maad ambee

46. JB, who was interviewed by the SEA Investigation Team and gave evidence before the JDC but not the Tribunal, stated that he stayed in the house with GH and the Applicant from June 2004 until late August 2004. His room was adjacent to the Applicant's and GH's room was further away from theirs. He stated that Mary used to shop for them approximately once or twice a week, that she was often with the Applicant and that he considered the Applicant and Mary to be good friends. He did not see Mary spending any nights in the Applicant's room and he did not hear noises coming from the Applicant's room.

47. In an email dated 16 April 2009, one RS, who was working for PAE in Kisangani at the time in question, stated that the alleged relationship between the Applicant and Mary "couldn't happen" and he knew that it "didn't happen". According to him, he told the BOI this when he was interviewed but his statements were omitted from the BOI report. RS gave evidence to the JDC and also appeared before the Tribunal. He stated that he worked with the Applicant on aviation and movement control issues and that FG was his direct supervisor. He explained that the PAE supervisor in charge of passenger services did not get along with Mary because it was her job to ensure that PAE followed the United Nations rules and standards and people were trying to do things that were not in line with UN standards. According to RS, this PAE supervisor was favoured by FG and as such, any problem he had with Mary would be reported to FG and taken as the truth without question. When asked about the relationship between the Applicant and Mary, RS explained that since he played pool frequently with the Applicant, he would have known if Mary had been the Applicant's girlfriend. He denied the veracity of the allegation and explained that FG saying that Mary was the Applicant's girlfriend could only have come from hearsay because FG never socialized with any United Nations or PAE personnel in Kisangani but always went home after work. The Tribunal found RS to be a very credible witness.

48. The Tribunal cannot ignore the weight of the evidence strongly showing that the Applicant and Mary were not involved in a sexual relationship and/or that Mary did not spend any nights in the Applicant's room. One of the key individuals in this matter, Mary, the woman who was supposedly sleeping over at the Applicant's residence at night has consistently denied the allegations in different forums. In the absence of evidence establishing that Mary's denial

is at a loss as to how Moidrag Kraljevic figured out that the clothing belonged to Mary. Was Moidrag Kraljevic cognizant of every item of clothing owned by Mary to the point that he could identify them even when she was not wearing them? The record does not

15 May 2009 to the "United Nations Appeals Tribunal"[3] that she had started work about 3 months prior to his departure from Kisangani in April 2004. The BOI noted at page 28 of its report that Mary was transferred from Engineering to MovCon by the Applicant "shortly after he became OIC in Kisangani". Based on the foregoing, the Tribunal will infer that Mary was transferred to MovCon sometime between January and March 2004. The SEA Investigation Team found however that the alleged sexual relationship between the Applicant and Mary existed between April and December 2004. Consequently, the Tribunal can only conclude that Mary was transferred prior to the commencement of the alleged sexual

been thoroughly conducted, then the whole disciplinary process is tainted. The Tribunal noted that since the preliminary investigation is "the harbinger of a disciplinary proceeding it is vital that it be conducted in a rational, lawful and judicious manner" and that it should not "be the gateway to a foregone decision to the establishing of a disciplinary committee or a finding of guilt".

69. In *Ljungdell* , UNDT/2010/041, paragraph 47, citing Manfred Nowak, UN Covenant on Civil and Political Rights, CCPR Commentary (N. P. Engel, Arlington: 1993) the Tribunal acknowledged that "the right to a fair trial on a criminal charge is considered to start running not 'only upon the formal lodging of a charge but rather on the date on which State activities substantially affect the situation of the person concerned' This would equally be applicable to investigation that may lead to disciplinary proceedings…"

The Board of Inquiry

Bohn

70. The Respondent submits that since none of the factual findings of the BOI formed a basis for the finding of misconduct against the Applicant, the Tribunal need not make any finding in regard to the conduct of the BOI. This submission is erroneous for two reasons. Firstly, the Tribunal notes that in *Abu Hamda* 2010-UNAT-084, the Appeals Tribunal held that the role of the Dispute Tribunal is to conduct judicial review and that "[j]udicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker's decision". Thus, in reviewing the present matter, the Tribunal will scrutinize such evidence it deems relevant to determine whether or not the administrative decision under challenge is "reasonable and fair, legally and procedurally correct, and proportionate".

71. Secondly, in the Tribunal's humble opinion, without the purported BOI investigation and report, the Applicant would not have filed the current application for the reason that disciplinary proceedings would not have been initiated against him in the first place. While none of the factual findings of the BOI may have formed the basis for the finding of misconduct against the Applicant, the fact cannot be ignored that it was the same BOI's so-called investigation that

eventually gave rise to the basis for the finding of misconduct against the Applicant. Thus, it would be unfair for the Tribunal to accept the Respondent's submission and pretend that the finding of misconduct against the Applicant had no nexus whatsoever to the BOI but rather sprang out of thin air. Consequently, the Tribunal will review the conduct of the BOI and make findings, as it deems necessary.

72. At the time of the incidents in question, Section IV, Chapter 16 of the draft Field Administration Manual was the DPKO policy document governing BOIs.

73. Pursuant to paragraph 3.3 of Section IV of the Field Administration Manual, a BOI shall obtain the final Military Police/Chief Civilian Security Officer (MP/CCSO) report on an incident and any additional information required to complete its investigation. The BOI is then to establish the facts of the case from the evidence presented in the MP/CCSO reports and other documents.

74. The conclusion that the Tribunal draws from paragraph 3.3 is that a BOI is not meant to serve as an investigative tool and BOI members are not meant to turn themselves into investigators. The Tribunal's interpretation of paragraph 3.3 is that the initial investigation is supposed to be carried out solely by two entities i.e. the Military Police or the Chief Civilian Security Officer. The function of the BOI is to then review the reports of the MP/CCSO with a view to establishing the facts.

75. In the present case, the allegations against the Applicant were not investigated by the MPs or the CCSO. No evidence was placed before the Tribunal to indicate that the members of the BOI were either military police or security officers and yet they were, very regrettably, allowed to usurp the function of these two investigative bodies and allowed to carry out a purported investigation into all kinds of allegations against the Applicant. Even more regrettable

is the fact that the BOI was allowed to take statements from witnesses afresh when the Field Administration Manual clearly indicated that any additional statements from witnesses were to be obtained by the Board "only when the statements attached to the report are insufficient to enable it to address all relevant issues".

76. In view of the foregoing, the Tribunal concludes that it was not appropriate for the BOI to conduct the preliminary investigation into the alleged incidents of misconduct in the present case. This is a task that should have been left for trained investigators i.e. military police or security officers, as prescribed by the Field Administration Manual.

77. The Applicant submits that none of the original four allegations of misconduct originally set before the BOI constituted any of the final charges against him and that the BOI exceeded its original mandate by investigating 10 additional allegations without even advising him of his right to counsel or representation.

78. The Respondent submits that neither former staff rules 110.4 or 310.1 nor ST/AI/371 prohibited a preliminary investigation into allegations of misconduct from venturing further than the initial allegations leading to such preliminary investigation. The Respondent also submits that irrespective of the wide-ranging nature of the BOI investigation, the Applicant was charged with four specific instances of misconduct and in accordance with staff rules 110.4(b) and 310.1(c) and part III of ST/AI/371, the charges of misconduct, together with the Applicant's responses, were referred to the JDC.

79. It is the understanding of the Tribunal that the terms of reference ("TOR") of a BOI constitute the framework within which the BOI is to operate in that it defines the facts and issues the BOI is to address. In other words, the purpose of the TOR is to set out the precise scope of the BOI's inquiry.

2004, Kisangani, Democratic Republic of Congo". The Respondent was unable to provide a copy of the BOI's written terms of reference ("TOR") but EB, one of the BOI members, gave evidence that the TOR was for the BOI to look into allegations of four specific instances of misconduct and to determine whether, based on the facts, any United Nations regulations or rules had been violated. These four instances of misconduct related to: (i) the Applicant being involved in an altercation with another staff member at his residence; (ii) a daily casual worker under his supervision driving a forklift without authorization; (iii) problems with the Uruguayan deployment on 24 March 2004; and (iv) a daily casual worker under the Applicant's supervision

83. The Applicant asserts that his due process rights were violated because the BOI failed to advise him of the rights he had to legal representation.

84. The Respondent submits that the Applicant's right to due process was fully respected throughout the disciplinary proceedings, consistent with staff regulation 10.1, former staff rule 310.1 and with ST/AI/371 (Revised disciplinary measures and procedures).

85. A preliminary investigation relates to an investigation where either no specific allegation of misconduct has been reported or an individual staff member has been identified. At this initial stage the exercise is more a gathering or collecting of evidence and as such, most of the due process rights that subsequently attach to a formal investigation will not necessarily vest in the

92. The Tribunal is satisfied however that the 21 December 2004 interview record for the Applicant appears to have satisfied due process in that the Applicant was apprised of the allegations that were made against him in regard to his relationship with Mary and he was given the opportunity to respond. The Applicant explained however that while the answers in the interview record were correct, they did not accurately record the answers he had actually provided.

93. Additionally, the Applicant submits that his rights were violated because the BOI failed to provide him with transcripts of his interviews for review, especially since the abridged version relied on by the Respondent contained serious inaccuracies and deficiencies that were nevertheless used as damaging evidence against him. He further submits that witnesses who were interviewed by the BOI were not given the opportunity to review summaries or transcripts of the testimony attributed to them.

94. The Respondent submits that there is no requirement that the Applicant be provided with transcripts of the evidence uncovered during such an investigation.

95. In the Tribunal's view, it is a basic tenet in investigations for a record to be made of the witness's evidence in the form of a statement. The Tribunal also cons

100. The BOI provided several recommendations at the end of their report. Two of their recommendations were highly inappropriate in that they exceeded the fact-finding mandate of the BOI. The BOI demonstrated a fundamental misunderstanding of its role vis-à-vis the disciplinary process set out in ST/AI/371 by recommending that "PMSS be notified that, because of Mr. Powell's misconduct and lack of integrity during his MONUC service, he is unsuitable for further duty with the Organization and its Agencies". Additionally, the BOI recommended that "Mr. Powell should not be allowed to hold a supervisory position because of his repeated violations of UN rules and regulations and administrative instructions, his lack of integrity, his propensity to misuse his position and UN assets when left without direct scrutiny of a superior officer and his lack of ability to supervise staff". This was a performance related issue that should have been addressed in the context of th

preliminary evidence that had been gathered by the BOI had been made available to him and the specific allegation against him had been finalized.

107. Regrettably, the record indicates that the Applicant was not accorded any of the due process rights particularized in paragraph 108 above prior to and/or during the conduct of the SEA Investigation. The available evidence shows th

examination should have been a paramount consideration. Further, their absence made it impossible for the JDC to judge their credibility. Thus, the JDC Majority's reliance on these statements adversely affected the Applicant and violated his rights.

112. The Applicant also submits that the time taken for the JDC to be convened, a period of almost two years, was excessive and extremely stressful. In *Egh* UNDT/2011/118, the Tribunal dealt with the issue of a JAB report that had been delayed for almost two years. Drawing an inference from the factual background of the case, the Tribunal deduced that the explanation for the delay was that the JAB was awaiting the conclusion of a JDC report. The Tribunal subsequently concluded that "in the absence of a satisfactory explanation" the delay was "unconscionable".

113. Is there a satisfactory explanation in this case in relation to the delay in the conduct of the JDC? The allegations of misconduct against the Applicant were referred to the JDC Secretariat by the ASG/OHRM on 20 January 2006 but the JDC panel did not meet until 12 September 2006. No explanation is given for this almost eight month delay. Due to the absence of a satisfactory explanation, this Tribunal also finds that this almost eight month delay was unconscionable and undue.

114. The JDC met in executive session for planning purposes on 12 September 2006 and held hearings on 13 and 14 February 2007. The reason given by the JDC for this four month delay was that the initial intention in September was for the case to be reviewed, along with several others from MONUC, by an *dbn* JDC panel in the Democratic Republic of Congo (DRC), which was originally envisioned for November 2006. However, despite several intimations that the *dbn* JDC panel would be constituted this did not occur until March 2007. Thus, the decision was taken, in view of the Applicant's continued suspension, to proceed with the review by the original JDC panel established at United Nations Headquarters. The Tribunal is satisfied with the reason proffered by the JDC for the four month delay as it believes it was reasonable for the JDC at UNHQ to hold off any work on the case pending a potential transfer to an *dbn* JDC in DRC.

115. Additionally, after the hearings, the JDC seemed to have worked assiduously to finalize its report on 11 June 2007. Taking into consideration the nature and number of allegations against the Applicant, the volume of the documents and the complexity of some of the issues that had to be deliberated on, the Tribunal is satisfied that the delay, from 14 February 2007 to 11 June 2007, was not undue.

Placement on suspension

116. Pursuant to ST/AI/371, a staff member could be suspended following a preliminary investigation into conduct that is "of such a nature and of such gravity" to warrant suspension.

117. Based on the available evidence, the Tribunal is satisfied that the procedure set out in ST/AI/371 was followed i.e. he was placed on suspension after a preliminary investigation had been conducted. The Tribunal is not convinced however that the suspension was, in fact, necessary. Sec. 4 of ST/AI/371, goes on to provide that suspension may be contemplated where the conduct in question might: (i) pose a danger to other staff members or to the Organization; or (ii) if there is a risk of evidence being destroyed or concealed; and (iii) if redeployment is not possible. The crucial words in sec. 4 of ST/AI/371 are "**and** if redeployment is not feasible" (*and*). Thus, in the Tribunal's considered view, suspension may not be used to remove the risk or potential risk that the staff member poses, where redeployment of the staff member is possible.

118. The record reveals that redeployment in this case was possible because the Applicant had already been redeployed from Kisangani to Kinshasa for administrative reasons from the time the BOI issued its report in December 2004 until he was placed on suspension on 28 March 2005. No evidence was placed before the Tribunal to show that the Applicant posed a risk, subsequent to his redeployment from Kisangani to Kinshasa, to other staff members or to the Organization. Neither was evidence placed before the Tribunal to show that there was a risk of evidence being destroyed or concealed, especially in light of the fact that the Applicant had been removed from Kisangani and no longer had access to any of the records in his office.

119. The Applicant submits that his removal from MONUC with immediate effect and his placement on suspension with pay for almost 3 years was a violation of his rights due to the fact that this denied him access to archival material and data that were vital to the preparation of his defence.

120. The Respondent submits that former staff rule 310.1(b) provides that a staff member may be suspended from duty, with or without pay, during the pendency of disciplinary proceedings. The Respondent further submits that although former staff rule 310.1 makes no provision as to the period of such suspension, staff rule 110.2(a) provides that any such suspension shall normally not exceed three months. While accepting the applicability of the standard set out in staff rule 110.2(a) in this case, the Respondent asserts that

Remedies

127. The Applicant requests the following remedies:

a. Rescission of the decision of the Secretary-General, dated 20 August 2007, to demote him by one grade with no possibili

130. The Respondent is to restore the Applicant to the FS5 level that he was at prior to 20 August 2007. As a result of the wrongful demotion, the Respondent is also ordered to pay the Applicant the difference between the salary and entitlements of an FS4 and an FS5 from 20 August 2007 to the date of this judgment.

131. Additionally, for the material breaches of the Applicant's due process rights, the Respondent is ordered to compensate the Applicant in the amount of one year's net base salary at the FS5 level, taking into consideration the step he would have been at now absent the unlawful disciplinary measure.

132. Although the Applicant was paid during the period of suspension, the need for the suspension was questionable and the length of it was excessive. Apart from isolating him from professional life, the suspension also stymied his career progression. The Respondent is therefore ordered to pay $15,000 in compensation for moral injury.

133. The Applicant did not place any evidence before the Tribunal evincing his claim that he would have been converted to a 100 series contract in February 2005. Further, his claim that he would have obtained an FS6 between January 2005 and the date of this judgment is merely speculative. Consequently, this claim is dismissed.

134. The Applicant will be entitled to the payment of interest, at the US Prime Rate applicable at the date of this judgment, on these awards of compensation from the date this judgment is executable, namely 45 days after the date of the judgment, until payment is made. If the judgment is not executed within 60 days, five per cent shall be added to the US Prime Rate from the date of expiry of the 60-day period to the date of payment of the compensation.

(Signed)

Judge Vinod Boolell

Dated this 28th day of March 2012

Entered in the Register on this 28th day of March 2012

(Signed)

Jean-Pelé Fomété, Registrar, Nairobi