United Nations AT/DEC/1260

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1260

Case No. 1333 Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Spyridon Flogaitis, Vice-President, presiding; Ms. Jacqueline R. Scott; Mr. Dayendra Sena Wijewardane;

Whereas, on 3 October 2003, a former staff member of the United Nations filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 6 February 2004, the Applicant, after making the necessary corrections, again filed an Application requesting the Tribunal, inter alia, to:

> "1. Quash the decision of the Administrator, [United Nations Development Programme (UNDP)], … dismissing the Applicant from service …
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> 2. Reinstate the Applicant … with retrospective effect.
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> 3. Accord the Applicant compensation for moral agony and for legal costs."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 30 June 2004 and twice thereafter until 30 September;

Whereas the Respondent filed his Answer on 15 September 2004;

Whereas the Applicant filed Written Observations on 10 December 2004;

Whereas, on 22 October 2005, the Applicant submitted an additional communication;

Whereas the statement of facts, including the employment record, contained in the report of the UNDP/United Nations Populations Fund/United Nations Office for Project Services Disciplinary Committee ("DC") reads, in part, as follows:

> "II EMPLOYMENT HISTORY
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> [The Applicant joined the United Nations International Drug Control Programme (UNDCP), India, as a Management Assistant at Grade G-4 on 19 January 1998, on a fixed-term appointment. On 6 September 2002, he was summarily dismissed from service for serious misconduct.]
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> III. EVENTS LEADING TO DISCIPLINARY CHARGES
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> … On 4 March 2002, … the UNDCP Regional Representative received a cheque in the amount of Rs. 13,195 from a car service company - Har Hari Automobiles - together with a letter indicating that six bills numbered 181, 183, 192, 193, 212 and 222, had been 'wrongly' charged to UNDCP. [The] … Manager of the Precursor Project had previously informed [the UNDCP Regional Representative] that while examining some inter-office vouchers (IOVs) in October and November 2001, he had noticed that car 5UN2 had been suspiciously serviced/repaired 'several times'. Upon checking with the driver of car 5UN2, he was informed that the car had not in fact been taken for repairs 'on the days indicated on the bills'.
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> … On 5 March 2002, [the Applicant] 'sought an interview' with the Regional Representative and [the Manager of the Precursor Project]. At the interview, he 'admitted' to having sent his private car to Har Hari Automobiles and 'instructing the garage owners to forward the bills to UNDCP without indicating' the numbers on the license plates. [The Applicant] further 'admitted' that he later went to the Har Hari garage and gave them a cheque to 'cover the cost' of the enumerated repairs of his personal car, and then requested the garage owner to send a reimbursement cheque for the payment received from UNDCP. [He apologized for his 'mistake' and stated that he 'would not repeat such actions in the future'. The meeting was recorded by the Manager of the Precursor Project in a Note for the File of the same date.]
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> … During the same interview, [the Applicant] was asked whether anyone else was involved in the scheme. He then named [the Applicant in Judgement No. 1267, rendered by the Tribunal during this session], as the person who had 'inserted' UNDCP car numbers on the bills submitted. In a separate conversation … held on the same day, [the Applicant in Judgement No. 1267] 'confessed' to having authorized payments of the [Applicant's] bills.
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> … The UNDP Resident Representative then established, on 11 March 2002, a three-member panel to investigate this and other financial irregularities that had occurred in the India Country Office. The panel conducted its enquiry in accordance with the guidelines of circular UNDP/ADM/97/17[, dated 12 March 1997, entitled] 'Accountability, Disciplinary Measures and Procedures'. The panel interviewed a total of nine persons including the owner of the Har Hari garage service … the official

UNDCP driver of vehicle No. 5UN3, as well as [the Applicant and the Applicant in Judgement No. 1267].

… In his testimony before the panel, Mr. Hari, proprietor of Har Hari Automobiles, reiterated his assertions in his previous written statement of 4 March 2002. He asserted that all [six] bills pertaining to the work on [the Applicant's] car were personally handed over to [the Applicant] 'either at the garage or in the office'. He further stated that the cheques issued by UNDCP to cover the six bills were 'handed over to the garage by [the Applicant]'. He then pointed out that 'in the case of work done on official cars both bill and cheque are handed over or received from UNDCP drivers'. In his testimony before the panel, … [the] brother of Mr. Hari, explained that the letter of 1 March 2002 that he sent to UNDCP (admitting erroneous billing on the part of Har Hari Automobiles and enclosing a reimbursement cheque for Rs. 13,195) was actually copied by him from a draft supplied to him by [the Applicant] on 1 March 2002. He maintained that he was instructed by [the Applicant] 'to leave blank the portion of the bills' which carry the number of a car being repaired. This was because 'some other car number would have to be written there to pass the bill for payment'. All the six bills, he continued, were then 'handed over' to [the Applicant] because they 'related to his personal vehicle …' He then showed the panel one of the job cards covering the repair work, with [the Applicant's] signature in the owner's column. Finally, [the brother of Mr. Hari] identified the blank section of each of the six bills that had subsequently been completed by another person, not employed by Har Hari Automobiles. [He] concluded his testimony by revealing that subsequent to Mr. Hari's statement of 4 March 2002, [the Applicant] paid a surprise visit to their garage accompanied by three strangers. [The Applicant] then sought to induce [the brother of Mr. Hari] to disown Mr. Hari's statement of 4 March 2002, on pain of being 'dragged to court' or suffering a detriment to their business.

... In her testimony before the panel … an employee of UNDCP stated that, being familiar with the handwriting of [the Applicant], she could assert that the addresses entered on the 6 bills at issue, were cast in the handwriting of [the Applicant]. [The UNDCP employee] then revealed that she was instructed by [the Applicant in Judgement No 1267] in late February/March 2002, to alter the notation on the bills No. 181 and 183 to connect them to car No. 5UN3 instead of No. 5UN2 as initially indicated, because they were incorrectly designated.

… In his testimony before the panel, [the Applicant] made a statement on 18 March 2002 and clarified it later on 21 March … and on 1 April ... In the initial statement (18 March 2002), he controverted his earlier 'admission' contained in the Note for [the] File recorded by [the Manager of the Precursor Project] on 5 March 2002. He denied he made an oral statement to [the Manager of the Precursor Project] to the effect that 'he had made a mistake'. He also pleaded ignorance of the reason why the service station omitted the car numbers on the 6 bills sent to UNDCP. The panel therefore evaluated the documentary evidence provided by the service station including the statements made by all the witnesses interviewed. The panel found that [the Applicant] did indeed have his private car … 'repaired at the M/S Har Hari Automobiles and requested them to leave blank the vehicle number and customer name on the first copy of the bills'. The panel also found that it was specifically due to that scheme that the UNDCP office was induced to pay for the repairs. The panel, on the evidence, also found that [the Applicant in judgement No. 1267]

> 'wrongly certified three bills for payment'. The Panel then concluded that [the Applicant] tried to conceal 'his misconduct' by giving the garage owner a cheque and requesting him to write an explanatory letter therefor.
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> … The panel then examined discrepancies noticed in overtime records for January 2002. It noted that [the Applicant] had claimed to have worked overtime for a total of 36.5 hours on 5, 6, 19 and 20 January. … It examined the sequence of entries of the register maintained by the guard at the 'main gate of the UNDCP Office'. The panel also interviewed … the guard on duty during the period in question. The panel determined that … [on] 6 January 2002, there was no entry for [the Applicant] … [and that on] … the 20th of January 2002, there is no record of [the Applicant] having entered the building. … The panel found that on 5 January [the Applicant] worked for '2.5 hrs.' and on [19] January he worked for '7.2 hrs'. However, he claimed '8.5 hrs.' and '9 hrs.' of overtime on those respective dates."

On 11 May 2002, the Applicant was notified by the Deputy Representative of the UNDCP New Delhi office that he would be suspended from service pending investigation of the irregularities reported by UNDCP.

On 22 May 2002, the Applicant was provided with a copy of the Investigation Panel Report and was instructed to provide in writing any response he wished to make to the report and charges therein or any further submissions prior to a decision on the case. On 3 June, the Applicant responded with his comments on the report and findings of the Investigation Panel, denying his admissions of 5 March to the Manager of the Precursor Project and claiming that the evidence regarding his fraudulent overtime claims was inadequate.

On 26 June 2002, the Officer-in-Charge (OiC), Bureau of Management, UNDP, informed the Applicant that the Office of Legal and Procurement Support (OLPS), UNDP, was of the view that he had failed to refute the allegations of the Investigation Panel and was, therefore, satisfied that a *prima facie* case of misconduct existed. Accordingly, the case would be referred to the DC in accordance with staff rule 110.4 (b) for advice as to what, if any, disciplinary sanction should be applied. However, on 27 August, the Administrator of UNDP wrote to the Applicant to inform him that, in accordance with the second paragraph of staff regulation 10.2, he had decided to summarily dismiss him, based on a thorough review of all the evidence on the record. The Administrator added that in accordance with staff rule 110.4 (c), the Applicant could request this decision to be reviewed by the DC.

On 20 October 2002, the Applicant wrote to the Administrator, UNDP, requesting that his case be referred to the DC. On 6 December, his case was submitted to the DC in New York for review.

On 25 June 2003, the DC submitted its report. Its considerations, and conclusions and recommendations read, in part, as follows:

> "V. *CONSIDERATIONS*
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> 15. At the outset, the Committee noted that the extreme distance between New York and India - situs of Appellant and his counsel - made oral presentation of counsel's submissions impossible. Thus it settled for an *in camera* consideration of written submissions previously submitted by counsel on both sides. This was done with the knowledge of Appellant's counsel. Owing to the fact that Appellant's counsel could not be present, the Chairman requested the Respondent's counsel not to attend the hearing in order for an equilibrium in representation to be maintained.
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> …
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> VII. *CONCLUSIONS AND RECOMMENDATIONS*
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> 34. The Committee unanimously concluded that the Administration had made its case for summarily dismissing [the Appellant] and had not in any way denied him his due process rights. The procedure laid down in the Staff Rules and Regulations for investigating financial irregularities and acts of impropriety [was] scrupulously followed. The Committee further concluded that [the Appellant] had failed to adduce countervailing evidence to dislodge the [six] charges that were brought against him. The Committee dismissed the Appellant's appeal to have the Disciplinary Committee recommend that the Administrator's act of summary dismissal be set aside. The decision of the Administrator in this respect was well founded. The Committee recommends that because Har Hari Automobiles willfully aided [the Appellant] in his scheme to defraud the Organization, UNDCP should cease doing business with that service garage. Also, when targets of an investigation are being interviewed, a copy of the statement of the interview should be shown to them for their contemporaneous endorsement of it to be secured, so as to leave no doubt of its authenticity and evidentiary value. Furthermore, UNDP should endeavour to compile its case records with well-preserved documentation that should be neat, legible and better arranged for easy reference. There should also be one continuous system of pagination unifying briefs and annexes.
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> 35. *IN CONCLUSION, the Committee unanimously finds that the Administrator's decision in this case was fully justified and will therefore make no further recommendation.*"

On 15 July 2003, the Administrator, UNDP, transmitted the report of the DC to the Applicant and informed him as follows:

> "The [DC] concluded that the evidence and the circumstances justified your summary dismissal and recommended that my decision stand … I have accepted the recommendation of the [DC] and your summary dismissal is hereby upheld. This constitutes, under staff rule 110.4 (d), the final decision in this case …"

On 6 February 2004, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Investigation Panel was improperly constituted because of the inclusion of the Manager of the Precursor Project who had originally discovered the billing discrepancies.

2. The witnesses who appeared before the Panel were interviewed in the Applicant’s absence so that he was denied the opportunity to cross-examine them.

3. The Applicant was not advised of his right to counsel during the investigation and was therefore denied due process.

4. According to the Applicant, Mr. Har Hari was probably coerced and intimidated by the UNDCP authorities. Thus, the Applicant challenged his testimony.

5. According to the Applicant, the Note for the File prepared by the Manager of the Precursor Project was pure concoction.

6. The Administrator had no legal authority to unilaterally convert a *prima facie* case of misconduct slated for the DC to one of serious misconduct that would merit summary dismissal.

7. The charge of overtime irregularity was based solely on the oral testimony of the security guard.

Whereas the Respondent's principal contentions are:

1. It is within the discretionary power of the Secretary-General to determine what behaviour constitutes misconduct or serious misconduct, as well as the disciplinary measures cited in staff rule 110.3 to be imposed.

2. The Respondent submits that the decision to summarily dismiss the Applicant was properly taken pursuant to staff rule 110.4 and to Section 3.4 of UNDP/ADM/97/17 and was based on the *prima facie* evidence of serious misconduct, which the Applicant had failed to rebut.

3. The decision to summarily dismiss the Applicant was a necessary and valid exercise of the Secretary-General’s discretionary authority to maintain the highest standards of integrity, and did not violate the Applicant’s rights.

4. The Applicant’s full due process rights were respected.

5. The contested decision was in no way tainted by bias, improper motivation, or other extraneous factors.

6. The penalty of summary dismissal in this case was not disproportionate to the offence committed by the Applicant.

The Tribunal, having deliberated from 2 to 23 November 2005, now pronounces the following Judgement:

I. The Applicant, a Management Assistant at Grade G-4, UNDCP, New Delhi, since January 1998, was summarily dismissed from service effective 6 September 2002, on the grounds of serious misconduct. The charge against him was one of fraud.

The Applicant's dismissal was based on two counts: first, that he had his private vehicle serviced and repaired on six different occasions at the same garage to which the UNDCP office sent its vehicles for repair (the Har Hari Automobiles in New Delhi) and, that he had arranged for the garage to submit the six related bills to UNDCP for payment as though the vehicle concerned was an official one; secondly, a charge which arose in the course of investigating the first, that he had cheated on two payments he received for twenty hours of alleged overtime work on 6 and 20 January 2002.

The service and repairs to the Applicant's vehicle apparently took place in the period October to November 2001. It would seem that sometime prior to 4 March 2002, the Manager of the Precursor Project, UNDCP, had noticed that one of the official vehicles was being serviced repeatedly. His curiosity aroused, he made some inquiries within the UNDCP Office in connection with this matter.

On 4 March 2002, the UNDCP office received a cheque for Rs. 13,195 from the Har Hari garage together with a letter dated 1 March informing UNDCP in effect that the garage had "erroneously" billed UNDCP for repairs to a vehicle which did not belong to it and that the garage owner was refunding the payment that had been made. That same evening, the Applicant requested an interview with the Regional Representative of UNDCP and the Manager of the Precursor Project. The interview took place on 5 March and the Respondent's position is that the Applicant admitted the first charge against him. It is a position which the Applicant has refuted.

II. Following these revelations, UNDCP embarked on an elaborate process of inquiry and addressed a letter to the Applicant, on 5 March 2002 itself, setting out in writing and in relative detail the suspected fraud in relation to the first charge referred to above. The letter also referred to the meeting which had taken place between the

two UNDCP officials and the Applicant that morning, on the initiative of the Applicant. The letter proceeded to state as follows:

> "You admitted that you had got your car repaired and had instructed the garage owners to forward the bills to UNDCP without indicating the car numbers. You further informed that the car numbers on the bills were written by the Senior Management Assistant who had taken administrative responsibilities in October 2001. You confirmed that this lady was aware of the whole scheme. You also agreed to state all these facts in writing which we have not received."

The letter ends with the statement "I would appreciate receiving your explanation in this regard".

III. The Respondent's position is that, on the same day, the two officials concerned prepared and signed a confidential "Note for the File" which purports to record in somewhat greater detail what took place and was said at this meeting. The Note for the File was not signed by the Applicant nor was it shown to him until much later. However, the letter of the same day encapsulates the substance of the Note for the File.

This is a letter to which the Applicant should have responded immediately, but he took his time to answer it. The Applicant responded to the letter only on 18 March 2002 and claimed that it was all a "mistake" (presumably both on the part of the garage and of the UNDCP Office), but refrained from refuting the very specific and significant allegations made against him in the penultimate part of the 5 March letter. Of course, this is inconsistent with his alleged admission of guilt, but the Applicant did not deny having so confessed, as might be the normal reaction of any person, if a wholly incorrect position had been attributed to him or her in the letter. In the meantime, on 11 March, the UNDCP Regional Representative had established a three-member panel of investigation to establish facts in connection with the alleged irregularities, in accordance with the pertinent circular UNDP/ADM/97/17.

IV. One of the three members of the panel was the Manager of the Precursor Project who had initiated the inquiries within the UNDCP office in connection with the first charge and who was also present together with the Regional Representative of UNDCP at the meeting held with the Applicant on 5 March 2002. On 12 March, the Applicant was notified of the investigation; provided with a copy of UNDP/ADM/97/17; asked to cooperate with the investigation, to suggest other persons of whom inquiry might be made; and, informed of his right to call witnesses on his behalf if he so desired.

The Panel of Investigation completed its work on 17 May 2002 having heard a number of witnesses, obtained clarifications, and recorded statements of various persons, including the Applicant himself. On 22 May, the Panel Report and the entire record of the investigation was made available to the Applicant for his review, and he was invited to "make any answer in writing to the Panel's report and charges or any further submission [he wished] to be considered prior to a decision in the case".

V. On 3 June 2002, the Applicant provided his comments, inter alia, alleging that the garage owners had made statements under pressure of losing business. Furthermore, he argued that the statements were taken without the Applicant being allowed to be present and being able to cross-examine the witnesses. He also denied making any confession. The Applicant's response was reviewed and the OiC, Bureau of Management, UNDP, wrote to the Applicant on 26 June stating that a *prima facie* case of misconduct had been established which would be referred to the DC in accordance with staff rule 110.4 (b) for advice as to what disciplinary action should be applied in his case. The Applicant was again provided with a copy of UNDP/ADM/97/17 and advised of his rights under the circular. The Applicant replied to this letter on 31 July and indicated his selection of counsel to represent him in the DC proceedings.

However, on 27 August 2002, after considering this exchange of correspondence and the record, the Administrator, UNDP, concluded that the facts amounted to serious misconduct and warranted summary dismissal under staff regulation 10.2 with the Applicant having a right to a *post hoc* review of the decision by the DC. The dismissal from service took effect on 6 September. The DC reviewed the case on 25 June 2003 and confirmed the decision taken by the Administrator, which finding was conveyed to the Applicant on 15 July.

VI. The Tribunal has set out the sequence of events at length with a view to indicating the extent to which the Administration had gone to apprise the staff member of his rights and to safeguard due process. The Tribunal takes the view that, on the first charge, adequate detail was provided to the Applicant well before the investigation was begun by virtue of the letter addressed to him on 5 March 2002. As regards the second charge, this was one which arose in the course of the investigation and whilst the extent to which it was reduced to writing as required by the circular is unclear, the Applicant was given all the relevant documentation. His own clarifications and

statements make it clear that he was fully apprised of the case against him on that count as well.

The panel of investigation and later the DC did not find the Applicant a credible witness and treated evidence against him as credible and conclusive. This is very much the province of these fact-finding bodies and the Tribunal will not lightly interfere with such findings unless there are compelling reasons to do so.

VII. The Tribunal has already commented on the dilatory and non-responsive manner in which the Applicant dealt with the contents of the Note for the File as summarized in the letter of 5 March 2002. Only in statements he gave before the Panel did the Applicant controvert the admission he allegedly made on 5 March. He could and should have done this much earlier. Even when he dealt with the report and record of the panel of investigation, both on 3 June and 31 July, his complaint seems to be focused on the more peripheral issue that the Note for the File was not given to him on the date it was recorded, rather than on whether he had confessed. As has been pointed out, the letter addressed to him on 5 March summarized the substance of the Note for the File. Furthermore, the Note for the File, stating that the Applicant had in effect confessed to the first charge, was witnessed by both the Manager of the Precursor Project and the Regional Representative of UNDCP in New Delhi. The Applicant chooses to ignore this significant fact. The Applicant does not allege that the Regional Representative, UNDCP, conspired with the Manager of the Precursor Project to manufacture a false document. Moreover, the Applicant overlooks the fact that the Regional Representative also is a signatory to the Note. For these reasons, and independent of the other evidence that has been recorded, the Panel and the DC had a good basis for rejecting the credibility of the Applicant. There was, in the Tribunal's view, enough internal evidence to assess the credibility of the Applicant and to proceed on the basis that he had made an admission relative to the first count.

VIII. The Tribunal must now address three issues which the Applicant has raised. The first of these is that, once a decision was made to refer the case to the DC, the Administrator had no power to summarily dismiss the Applicant. The Tribunal takes the view that it was within the power of the Administrator to categorize the Applicant's actions as serious misconduct. The mere fact that a decision had been made earlier to refer it as a case of misconduct to the DC to elicit the DC's views before deciding on the appropriate sanction, does not preclude a further review and another view being taken by the Administrator as specifically provided for in Parts V and VI of the

pertinent circular, as long as there were facts to justify the decision. There can be no dispute that if the charges against the Applicant have been established, this is indeed a case of serious misconduct.

IX. The second issue is the claim that the panel of investigation was improperly constituted for the reason that the Manager of the Precursor Project should not have been a member of the panel. The Manager of the Precursor Project had conducted some initial inquiries arising from his own observations and was also a party to the Note for the File, the authenticity of which was put in question.

The Tribunal has, in a number of recent decisions, underlined the need to avoid any conflict of interest or even a perception of conflict of interest. The inclusion of the Manager of the Precursor Project, who was apparently the first person to make some initial inquiries within the office, may result in a perception of conflict, but where his position as the drafter of the Note to the File puts him in a position of a witness when that record is brought directly into question, there is, in the Tribunal's view, a real conflict of interest.

Normally such a conflict of interest would, as the Tribunal has held in its Judgement No. 1175, *Ikegame* (2004), "justify dismissing the entire case against the Applicant because of the tainted proceedings". However, as was also held in *Ikegame* this does not necessarily follow where "[t]he Tribunal finds that the conclusion reached … was reasonable if not inevitable". For reasons to be further elaborated in this Judgement, this is very much the case here. Accordingly, for the violation of the Applicant's right, in this instance, the Tribunal will award compensation without vitiating the proceedings.

X. Finally, the Tribunal must deal with the very important issue that the Applicant was not given an opportunity to cross-examine or, to put it in more neutral terms, confront the witnesses. The Tribunal finds this submission troublesome as this aspect is neither adequately amplified by the Applicant's counsel before the DC nor dealt with by the Respondent in his Answer at all.

The Applicant's case appears to be that the Administration of UNDCP became alarmed when they received the refund cheque and came to know that the internal controls for payments were not tight enough. The Applicant claims that the Har Hari garage owners were then put under pressure to change their story from a genuine mistake on their part in sending wrong invoices for payment by UNDCP, to one of fraud by the Applicant. According to the Applicant, all inquiries were carried out only

after the receipt of the letter and refund of the payment. His contention is that the statements on which the Administration must necessarily rely for this changed version of the facts were taken "behind his back" and that he had no chance to confront the witnesses, albeit that he was given, as set out in the narration above, every opportunity to present his version of the story and to call any witnesses he wished. The Administration's version is that, when the Applicant learned that the irregularity had become known, he triggered the refund in an attempt to cover up his tracks and to portray the fraud as a mistake. Whilst the two versions were fully before the panel of investigation and the DC for their consideration, it is correct that these two contradictory versions of, as it were, the "whodunnit", were never put to the test by cross-examination or confrontation of witnesses as should have been done.

XI. The Tribunal, thus, has sympathy with the Applicant's argument. Whilst it is correct that the panel of investigation is, in a sense, an inquiry into the facts preceding a disciplinary inquiry, it is also, in effect, the "hearing" which was conducted on the spot where the action had taken place and where the actors were present. The DC hearing took place a year later in New York. Although the investigation in this case was ostensibly conducted to establish facts, from the very outset the Applicant was identified and implicated. These proceedings were, in effect, a quasi-judicial inquiry, and one in which the Applicant was entitled, in the Tribunal's view, to have all his due process rights carefully preserved. This is supported by its findings in Judgement No. 1246 (2005), where the Tribunal was of the opinion

> "that the assurances of due process and fairness, as outlined by the General Assembly [in its resolution 48/218 B] and further developed in the rules of UNDP, 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*.
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> Furthermore, the Tribunal wishes to reiterate its jurisprudence in [Judgement No. 983, *Idriss* (2003)] and reaffirms that, under normal circumstances, no accusation may be made on the basis of anonymous testimony, when the accused person requires identification in order to better prepare his defence. …"

XII. Circular UNDP/ADM/97/17 does not expressly set out a requirement for cross-examination as understood in the common law systems but provides clearly that

the staff "participating in or otherwise involved" in disciplinary investigations "shall be accorded necessary due process protections". A case like the present is demonstrably one in which the right of confrontation should have been permitted. This right is "necessary" for due process protection and accordingly, in the Tribunal's view, the requirement is one which is provided for in the circular. The failure to accord the Applicant such an opportunity, even when he drew attention to it, is a denial of his due process rights. However, for the reasons given, the Tribunal is of the view that, in this case, there is sufficient evidence based on the Applicant's own admission and subsequent conduct not to treat him as a credible witness. In these circumstances, the Tribunal has decided to award the Applicant compensation for infringement of his rights but not to vitiate the entire proceedings and the decision based thereon.

XIII. In view of the foregoing, the Tribunal:

1. Orders the Respondent to pay the Applicant the sum of US$ 6,000 as compensation, with interest payable at eight per cent per annum as from 90 days from the date of distribution of this Judgement until payment is effected; and,
2. Rejects all other pleas.

(*Signatures*)

Spyridon **Flogaitis**
Vice-President, presiding

Jacqueline R. **Scott**
Member

Dayendra Sena **Wijewardane**
Member

New York, 23 November 2005

Maritza **Struyvenberg**
Executive Secretary