



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1477

Case No. 1514

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,  
Composed of Mr. Dayendra Sena Wijewardane, President; Mr. Goh Joon Seng, Second Vice-President; Ms. Jacqueline R. Scott,

Whereas, on 17 January 2007, a former staff member of the United Nations, filed an Application in which he requested the Tribunal, *inter alia*:

“11. [T]o order:

- (a) That the Applicant be reinstated in his post;
- (b) That he be fully paid all his salary and other allowances since he was suspended without pay until his reinstatement;
- (c) That he be paid compensation for the injury sustained and that the Tribunal ... find that this is an exceptional case and justifies the payment of a higher indemnity as provided for in Article 9 (1) of its Statute;

Or failing that

- (d) The payment of his full salary up until the decision of the Tribunal and compensation for injury at a higher indemnity ...”

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 25 June 2007, and once thereafter until 25 July;

Whereas the Respondent filed his Answer on 20 July 2007;

Whereas the Applicant filed Written Observations on 22 October 2007;

Whereas the Respondent submitted a communication on 13 November 2007;

Whereas, on 31 July 2009, the Tribunal decided to postpone consideration of this case until its next session;

Whereas the statement of facts, including the employment record, contained in the report of the Joint Disciplinary Committee (JDC) reads, in part, as follows:

***“Employment History***

... The [Applicant] joined the Organization on 28 October 2001 as a Security Officer at the P-3 level with [Organization Mission in the Democratic Republic of the Congo (MONUC)]. He served as Regional Security Officer at various MONUC duty stations before being assigned to Kisangani.

...

***Background***

... In mid-2004, allegations of serious sexual abuse and exploitation by military and civilian personnel of MONUC came to the attention of the UN. As a result, steps were initiated to investigate these allegations.

... By an email dated 28 August 2004, [the] Chief Security Officer [CSO, MONUC], requested an investigation in Kisangani on allegations of sexual exploitation and abuse. The Regional Security Officer, i.e., the [Applicant], was on leave at that time and not informed about this impending investigation. [T]he [Applicant]’s supervisee [Mr. P.] acting as Officer-in Charge of the Security Unit while the [Applicant] was on leave, conducted the investigation. In the course of that investigation, [the supervisee] was informed that the [Applicant], his immediate supervisor, was allegedly implicated in the activities being investigated. [The supervisee] requested that another investigator take over the inquiry, but was instructed to continue.

... On the basis of the information contained in [the supervisee’s] report on his investigation, a second preliminary investigation was initiated ... This preliminary investigation found that the [Applicant] and several other members of the MONUC staff were ‘participants in activities constituting acts of prostitution or procurement.’... The report recommended, inter alia, the opening of a formal investigation and redeployment of the [Applicant] and others involved.

...

... At a meeting held on 21 October ... the [Applicant was presented] with two rape charges/allegations against him ... By an e-mail on 21 October ... the [Applicant] denied as unsubstantiated the allegations presented to him ...

...

... On 5 November 2004, [the Office of Human Resources Management (OHRM)] and [the Department on Peacekeeping Operations (DPKO)] jointly appointed an Investigative Panel (IP) to investigate the allegations of rape, sexual exploitation and sexual abuse ...

...

... Pending the investigation, [on] 11 November 2004 ... the [Applicant] was informed of the decision to suspend him with full pay.

... By an e-mail dated 15 November 2004 to [the Special Representative of the Secretary-General (SRSG)], the [Applicant] called for an ‘independent investigator ... [to] be designated to carry out an objective and transparent investigation for the manifestation of the truth.’ There is no reply to this request on record.

... The IP conducted the investigation from 23 November through 10 December 2004. By a memorandum to [the Assistant Secretary-General] for Human Resources Management, dated 26 January 2005, [the Assistant Secretary-General] for Peacekeeping Operations submitted the investigation report (IR), concluding that the [Applicant] ‘engaged in sexual exploitation and sexual abuse of Congolese women, including a child [Ms. X]. Furthermore, the Panel concluded that [the Applicant] used his professional position for his personal benefit.’ DPKO recommended that OHRM undertake appropriate disciplinary action.

... By a letter to the [Applicant] dated 2 February 2005 ... [t]he [Applicant] was notified that he was charged with sexual exploitation and sexual abuse of local women, including a minor child, in contravention of the Secretary-General’s policy against sexual exploitation and sexual abuse. He was also charged with ‘accepting favours, gifts, and other personal benefits from third parties in exchange for performing, and promising to perform [his] official duties.’ He was also charged with acts discrediting the United Nations with local authorities. He was requested to provide a written statement or explanation in response to the allegations.

... [On] 15 February 2005 ... the [Applicant] was notified of the decision to extend the suspension without pay.

... On 28 February 2005, the [Applicant] submitted a response to the charges, denying all allegations and challenging the investigation process on procedural grounds. On 3 March, he submitted additional comments, challenging the propriety of his suspension.

... [The Applicant] was notified by a letter dated 15 March 2005 of the decision to summarily dismiss him...

... By a letter dated 6 May 2005, the [Applicant] submitted a request for review of summary dismissal to the JDC [in New York].”

The JDC submitted its report on 9 July 2007. Its conclusions and recommendations read, in part, as follows:

***“Conclusions and Recommendations***

...

133. Having carefully examined the available documentation, as well as having heard witnesses, including those whose testimony was referred to in the documents related to charges, the Panel wishes to express its extreme dismay with the inadmissibly loose and weak evidence base of the presentations and reports, in particular the report of the IP which is notable for its partiality, cavalier treatment of witness testimony and facts, and numerous inconsistencies in the logic of the presentation. Contradictions, inconsistencies, unfounded conclusions and judgments not supported by any evidence are too numerous in the case material to list them all. ...

...

138. In the Panel's view, the case against the Requestor was built on hearsay, rumours and uncorroborated allegations at the expense of hard, verifiable evidence. Many allegations against the Requestor were too amorphous to respond to. For example, how does one disprove an allegation that one is 'well-known' as 'a good client' of prostitutes - an allegation extensively used in the Administration's case - when such opinion is not attributed to anyone in particular?

139. The Panel noted, at the same time, that whenever the Requestor attempted to provide factual information or explanation to disprove allegations against him ... his arguments were either dismissed outright, or ignored, with no attempt made to verify the facts. ...

...

142. The Panel noted that there were quite a few disturbing allegations made regarding the Requestor's conduct. However, these allegations, no matter how troubling, do not become fact merely on the weight of their number or severity. [T]he Panel has found numerous mistakes of fact, inconsistencies, omissions, outright distortions of testimony and uncorroborated allegations in the Administration's presentation to the Secretary-General that served as a basis for the decision to summarily dismiss the Requestor, as well as in the case documents presented to the JDC. Given the unsubstantiated charges and patent inadequacies of the investigations, the process seemed to have been driven more by a need to demonstrate a vigorous response to the international outrage over SEA [sexual exploitation and abuse] in the region rather than to see the case through to justice. This is, in fact, clearly admitted by the Administration which, in the words of the statements of its Representative, stated that 'in the context of sexual exploitation and abuse crisis in MONUC at the relevant time, the disciplinary measure of summary dismissal was the appropriate action to impose'.

143. ... [T]he Panel came to the conclusion that the facts on which the disciplinary measure was based have not been established, that there has been substantive irregularity (such as omission of relevant facts and distortion of evidence), and that there have been numerous procedural irregularities (such as reliance on unsigned and/or undated statements and withholding of material evidence).

144. The Panel therefore unanimously recommends that:

- 1) the decision to summarily dismiss the Requestor be rescinded; and,
- 2) the Requestor be paid salary and entitlements due to him had he not been suspended without pay and summarily dismissed.

145. The Panel wishes to stress that it had neither the mandate nor means to conduct a thorough, comprehensive investigation of all circumstances of the case, and had to restrict its analysis to materials that were made available to it. Its decision is therefore limited to the finding that the Administration failed to make its case against the Requestor by preponderance of evidence. With this in view, the Panel's recommendation to rescind the decision to summarily dismiss the Requestor should not be seen as a final exoneration of the Requestor."

On 14 November 2006, the Under-Secretary-General for Management transmitted a copy of the report to the Applicant and informed him as follows:

"The Secretary-General has examined your case in the light of the JDC's Report, as well as the entire record and the totality of the circumstances. The Secretary-General partially accepts the findings of the JDC but does not accept its findings with respect to the charge that you engaged in sexual exploitation and sexual abuse of local women,

including a minor, for the following reasons. Firstly, the JDC, in reviewing the evidence relating to the aspect of this charge involving a minor, erred in treating many of the evidentiary aspects of this issue on the basis that it was reviewing the evidence in a rape case. In order to prove this charge, the Administration does not have to prove that you raped a minor but has to show by a preponderance of evidence, that you engaged in sexual activity with a person under the age of 18 – regardless of the age of majority or age of consent locally – in violation of Section 3.2(b) of ST/SGB/2003/13, secondly, the JDC placed great emphasis on a statement attributed to the minor woman that she was raped by a ‘white American’, ... even though the JDC itself, as well as the Administration, referred to the evidentiary problems associated with this particular piece of evidence. However, despite having problems with this acknowledged the evidence, the JDC misdirected itself in concluding that such evidence was ‘clearly exonerating’. Thirdly, the JDC did not attach sufficient weight to the two statements, which were essentially consistent, made by the minor, to different people a little less than two months apart. According to the evidence on the record, she made both of these statements under difficult circumstances and, yet, they are essentially consistent. In addition, in light of your claim that you did not know the minor, her description of your house, which is contained in one of her statements and is consistent with the description by other witnesses, is significant. This aspect of her evidence was not given sufficient weight by the JDC. Engaging In sex with a minor, which is a violation of Section 3.2(b) of ST/SGB/2003/13, is grounds for summary dismissal. Accordingly, the Secretary-General regrets to inform you that he has decided not to accept the JDC’s recommendation for rescinding your summary dismissal and reinstating you.”

On 17 January 2007, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant’s principal contentions are:

1. In rejecting the recommendations of the JDC, the Secretary-General ignored the fact that the JDC panel had found that the “vast majority of the evidence presented is indeed hearsay, unsubstantiated allegations and rumours with no verifiable evidence”.
2. In rejecting the recommendations of the JDC on the charges concerning sexual exploitation and sexual abuse of local women including a minor, the Secretary-General rejected the JDC’s findings that the entire evidence on the record was “exonerating” without, on the other hand, relying on any incriminating evidence.
3. In rejecting the recommendations of the JDC, the Secretary-General completely overlooked the panel’s statement, to wit “[t]he process seemed to have been driven more by a need to demonstrate a vigorous response to the international outrage over SEA in the region than to see the case through to justice”.
4. In rejecting the recommendations of the JDC, the Secretary-General chose to ignore the panel’s finding that there had been substantial and procedural irregularities, which by themselves should have been fatal to the Administration’s case against the Applicant.

Whereas the Respondent’s principal contentions are:

1. The Secretary-General has broad discretion with regard to disciplinary matters, and this includes determination of what constitutes serious misconduct warranting summary dismissal.

2. The Applicant failed to meet the standards of conduct required of staff members as international civil servants. The decision of the Secretary-General to summarily dismiss the Applicant was a necessary and valid exercise of his discretion to ensure that only staff who meet the UN Charter requirement of the highest standards of integrity are retained for service.

3. The Applicant's due process rights were fully respected.

4. The decision of summarily dismiss the Applicant was not vitiated by bias, improper motive, or other extraneous factors.

5. The penalty imposed was not disproportionate to the offence.

6. The Applicant's appeal is without merit and, therefore, he is not entitled to any compensation.

The Tribunal, having deliberated from 26 October to 25 November 2009, now pronounces the following Judgement:

I. The conduct of the Secretary-General and the staff of the United Nations is governed by article 100, paragraph 1 of the Charter of the United Nations ("the Charter") which reads:

"In the performance of their duties the Secretary-General and the staff ... shall refrain from any action which might reflect on their position as international officials responsible only to the Organization."

II. The Staff Regulations elaborating on the obligations of staff members include:

*Regulation 1.2(b)*: Staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status."

*Regulation 1.2(e)*: By accepting appointment, staff members pledge themselves to discharge their functions and regulate their conduct with the interests of the Organization only in view. Loyalty to the aims, principles and purposes of the United Nations, as set forth in its Charter, is a fundamental obligation of all staff members by virtue of their status as international civil servants.

*Regulation 1.2(f)*: [Staff members] shall conduct themselves at all times in a manner befitting their status as international civil servants and shall not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations. They shall avoid any action and, in particular, any kind of public pronouncement that may adversely reflect on their status, or on the integrity, independence and impartiality that are required by that status."

III. By article 101, paragraph 1 of the Charter, the responsibility for the appointment of staff is vested in the Secretary-General. By paragraph 3, the Secretary-General is tasked with employing staff of "the highest standards of efficiency, competence and integrity".

IV. The Charter and the Staff Regulations thus vest the Secretary-General not only the authority but the duty to ensure that staff members meet the required standards of conduct befitting international civil servants. (See, Judgements No. 424, *Ying* (1988); 515, *Khan* (1991); and 542, *Pennacchi* (1991)). In addition, staff regulation 1.1(b) provides that staff members, upon taking office must declare in writing to “respect the obligations incumbent upon [him/her] as set out in the Staff Regulations and Rules”.

V. According to staff regulation 10.2, the Secretary-General may impose disciplinary measures on staff members whose conduct is unsatisfactory including summary dismissal of a staff member for “serious misconduct”. The choice of disciplinary measures to be applied must necessarily vest with the Secretary-General subject to its reasonable exercise by the Secretary-General. (See, *Ying, supra*, and Judgement No. 815, *Calin* (1997). Whether an act of misconduct is serious must necessarily depend on the nature of the act and/or the consequences thereof.

VI. Further, paragraph 2 of ST/A1/371 dated 2 August 1991, entitled “Revised Disciplinary Measures and Procedures” also provides:

“Misconduct is defined in staff rule 110.1 as ‘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 administrative issuances, or to observe the standards of conduct expected of an international civil servant’. 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;
- (b) Unlawful acts ... on or off United Nations premises, and whether the staff member was officially on duty at the time;
- ...
- (f) Misuse of Office; abuse of authority ...;
- (g) Acts or behaviour that would discredit the United Nations.”

VII. To protect the most vulnerable populations, especially women and children, the Secretary-General’s Bulletin of 9 October 2003 ST/SGB/2003/13 sets out special measures against sexual exploitation and abuse. Section 1 defines “sexual exploitation” as “any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes... Similarly, the term ‘sexual abuse’ means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.” [emphasis added]. The Bulletin further provides:

“3.1 Sexual exploitation and sexual abuse violate universally recognized international legal norms and standards and have always been unacceptable behaviour and prohibited

conduct for United Nations staff. Such conduct is prohibited by the United Nations Staff Regulations and Rules.”

Moreover, Section 3.2 provides:

- “(a) Sexual exploitation and sexual abuse constitute acts of serious misconduct and are therefore grounds for disciplinary measures, including summary dismissal;
  - (b) Sexual activity with children (persons under the age of 18) is prohibited regardless of the age of majority or age of consent locally. Mistaken belief in the age of a child is not a defence;
  - (c) Exchange of money, employment, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour, is prohibited. This includes any exchange of assistance that is due to beneficiaries of assistance;
  - (d) Sexual relationships between United Nations staff and beneficiaries of assistance, since they are based on inherently unequal power dynamics, undermine the credibility and integrity of the work of the United Nations and are strongly discouraged;
- ...”

VIII. The exercise of disciplinary powers for infraction of the Charter and the Staff Rules by United Nations staff members rests with the Secretary-General. This discretion is subject to review by the Tribunal, which “limits its review to whether the decision is tainted by prejudice or other extraneous considerations, mistake of fact, or lack of due process”. (See, Judgement No. 815, *Calin* (1997).)

IX. On the standard of conduct required of staff members of the Organization, as set out above, the Tribunal now examines whether the Applicant’s summary dismissal by the Secretary-General was a valid exercise of his powers to enforce and ensure compliance with the standard of integrity required and expected of an international civil servant. In arriving at its recommendation to rescind the Secretary-General’s decision of summary dismissal, the JDC had found “more likely than not, that the Administration: (i) failed to present facts that raise a reasonable inference of misconduct; and (ii) committed significant errors of fact ...”. However, the JDC qualified its recommendation, noting:

“The Panel wishes to stress that it had neither the mandate nor means to conduct a thorough, comprehensive investigation of all circumstances of the case, and had to restrict its analysis to materials that were made available to it. Its decision is therefore limited to the finding that the Administration failed to make its case against the [Applicant] by preponderance of evidence. With this in view, the Panel’s recommendation to rescind the decision to summarily dismiss the [Applicant] should not be seen as a final exoneration of the [Applicant].”

X. Section 3.2(b) of ST/SGB/2003/13 provides that “[s]exual activity with children (persons under the age of 18) is prohibited regardless of the age or majority or age of consent locally ...” Such activity



constitutes statutory rape even with the consent of the child victim. Section 3.2(a) of ST/SGB/2003/13 defines such activities as “acts of serious misconduct” which are “grounds for disciplinary measures, including summary dismissal”.

XI. The Tribunal now turns its attention to the issue of whether the Administration has made its case against the Applicant. The Tribunal notes that the imposition of disciplinary sanctions involves the exercise of discretion by the Secretary-General which constitutes a “special exercise of quasi-judicial power”. (See, Judgement No. 941, *Kiwanuka* (1999)). Thus, “the process of review exercised by the Tribunal is of a particular nature. The [Secretary-General]’s interest in maintaining high standards of conduct and thus protecting itself must be reconciled with the interest of staff in being assured that they are not penalized unfairly or arbitrarily” (ibid.).

XII. In analyzing whether disciplinary measures imposed by the Organization are proper, the Tribunal applies an eight factor analysis. Specifically, the Tribunal examines “(i) whether the facts on which the disciplinary measures were based have been established; (ii) whether the established facts legally amount to misconduct or serious misconduct; (iii) whether there has been any substantive irregularity (e.g. omission of facts or consideration of irrelevant facts); (iv) whether there has been any procedural irregularity; (v) whether there was an improper motive or abuse of purpose; (vi) whether the sanction is legal; (vii) whether the sanction imposed was disproportionate to the offence; (viii) and, as in the case of discretionary powers in general, whether there has been arbitrariness. This listing is not intended to be exhaustive.” (See, *Kiwanuka* (ibid.); see also, Judgement No. 898, *Ugгла*, para. II (1998)).

XIII. “With regard to (i) above, the Tribunal makes an examination of the facts, while in (ii), the Tribunal examines, as a matter of law, whether the characterization of the facts constitutes misconduct.” (Judgement No. 1490 (2009) in this term, citing *Kiwanuka* (ibid.). As the Tribunal held in *Kiwanuka*:

“In connection with (i) the Tribunal has in the past used such descriptions as ‘mistake of fact’ (Judgement No. 529, *Dey*, para. VII (1991)), ‘supported by cogent evidence’ (Judgement No. 928, *Abdul Hadi et al.*, para. IX (1999)), ‘ample evidence to justify’ (ibid., para. III), ‘conclusions supported by evidence’ (Judgement No. 756, *Obimba*, para. II (1996)), ‘allegations are well founded’ (Judgement No. 797, *Bouras*, para. VIII (1996)), ‘ample evidence for JDC to conclude’ (Judgement No. 897, *Jhuti*, para. IV (1998)), and ‘evidence supports conclusions’ (Judgement No. 830, *Anih*, para. V (1997)). What the Tribunal must examine is whether the findings of fact against the Applicant made by the Administration can be supported by the evidence on the record. Without substituting its own judgement for that of the Administration (cf. Judgements No. 490, *Liu* (1990), and No. 616, *Sirakyan* (1993)), it makes a judgement on whether the findings of fact are reasonably justifiable and supported by the evidence. If the Tribunal judges that the material findings of fact cannot be supported by the evidence, it may disagree with the conclusions of the Administration based on the evidence. Needless to say, the

Tribunal examines the facts and the evidence critically and fully and reviews the Administration's decision."

XIV. Applying the eight factors to the issue at hand, the Tribunal finds the facts sufficient to constitute misconduct. The Tribunal notes that Ms. X accused the Applicant of having sexual intercourse with her in two statements, given by her to two different persons within a period of less than two months. In one of those statements, she described in detail the Applicant's house where the rape had allegedly taken place. This description was consistent with the descriptions provided by the security guards and the maid. The Tribunal also notes the statements allegedly made by Ms. X that she was raped by a "white American". The Tribunal notes that that allegation was not made by Ms. X herself but was hearsay upon hearsay – it apparently was a statement made to an investigator, by a priest who had allegedly heard it from Ms. X. The Tribunal notes that it is possible that the statement was made with reference to another unrelated incident.

XV. As the record reflects, Ms. X's age was verified by the IP and a copy of her identification card with her birth date was annexed to the IP report. Moreover, Ms. X's testimony is corroborated by the statements of several eye-witnesses. According to the IP report, the security guards at the Applicant's residence confirmed that Ms. X came to the Applicant's house on a few occasions. In light of the evidence, the Applicant's claim that he did not know Ms. X is therefore clearly unfounded.

XVI. Although the Tribunal recognizes that each fact, on its own, might not be sufficient to find that the Applicant had committed misconduct, upon review of the record, the Tribunal is satisfied that the Applicant did indeed violate Section 3.2, paragraph (b) of ST/SGB/2003/13, by engaging in sexual conduct with Ms. X, a person under the age of 18 years.

XVII. The Tribunal next turns to consider whether the Applicant's rights to due process were respected. On this issue, a recapitulation of the events leading to the hearing before the JDC will be helpful. Upon receiving reports of SEA by United Nations Personnel in MONUC, investigations were initiated. The investigations were initiated in accordance with Section 2 of Administrative Instruction ST/AI/371 dated 2 August 1991 which reads:

"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. ..."

XVIII. The preliminary investigation concluded that the report of misconduct on the part of the Applicant was well-founded. The MONUC Head of Office reported the findings to the Assistant Secretary-General ("ASG") OHRM, with its recommendation of suspension from duty. The ASG, OHRM, on the basis of the evidence presented, determined that disciplinary action should be taken. On 2 February 2005, the

Applicant was informed in writing of the allegations and given the time and opportunity to answer the allegations. The entire dossier was then submitted to the ASG for OHRM for consideration. The whole process was conducted in accordance with staff rule 110.4(a). Even the JDC which found in favor of the Applicant rejected the Applicant's complaint on this issue.

XIX. The Applicant also contends that he was not formally notified of official adverse material placed in the file until he received the notice of suspension, and that this was in violation of ST/AI/292 on "Filing Adverse material in Personnel Records". This contention was canvassed before the JDC, which rightly rejected it, stating that this requirement could not apply to adverse material compiled and generated at the investigation stage. The right to view the adverse materials herein only exists where the Administration has decided to pursue the case. The Tribunal endorses the JDC's views above.

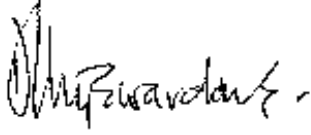
XX. The Applicant further asserts that the investigation should have been conducted by a Board of Inquiry (BOI) which would have "revealed the incompetence and laxity of the senior management staff". Although the BOI had been established, the BOI's Chairman recommended that "MONUC launch a full professional inquiry into the allegations in all their aspects, using trained investigators acting on the basis of comprehensive written instructions, and taking the necessary time to complete their investigations". The BOI requested a professional investigation, not because of fear of the truth being revealed, as alleged by the Applicant, but for fear of not being able to reveal the truth, as the BOI lacked sufficient resources to conduct a complete and thorough investigation.

XXI. The Tribunal now considers whether the decision of summary dismissal was due to improper motives. It is part of the Applicant's case that the allegations were investigated conducted by Mr. P. "a scheming subordinate who wanted to replace the [Applicant] ..." The record, however, reveals that when informed that the Applicant, his superior, was implicated, Mr. P. requested to be replaced but was instructed to continue. The Applicant has also failed to adduce convincing evidence that Mr. P. acted with bias, a burden which falls upon the Applicant. (See, Judgement No. 554, *Fagan* (1992), and Judgement No. 438, *Nayyar* (1988)).

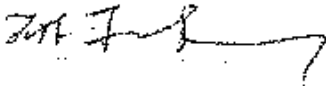
XXII. Finally, the Tribunal considers whether the sanction imposed by the Respondent was disproportionate to the misconduct. In light of the egregious nature of misconduct – i.e., sex with a child – the Tribunal concludes that the disciplinary measure of summary dismissal imposed on the Applicant by the Respondent was proportionate and well within the Secretary-General's discretionary powers.

XXIII. For the foregoing reasons, the Application is dismissed in its entirety.

(Signatures)



**Dayendra Sena Wijewardane**  
President



**Goh Joon Seng**  
Second Vice-President



**Jacqueline R. Scott**  
Member

New York, 25 November 2009



**Tamara Shockley**  
Executive Secretary