



Introduction

1. The Applicant is a former Security Officer who was attached to the Security and Safety Service at the United Nations Office at Nairobi (“UNON/SSS”). He alleges that his superiors made unlawful decisions and took unlawful steps in the course of and subsequent to investigations into his alleged behaviour by both UNON and the Kenya Police.

2. The investigations were into the disappearance of a firearm from the UNON Armoury and a plot to kill the Executive Director of the United Nations Human Settlements Programme (“UN-HABITAT”) who was also the Acting Director-General of UNON at the time.

3. The investigations lasted for over 2 years during which time the Applicant was not permitted to work although he remained on full pay. Following a report from an Office of Internal Oversight Services (“OIOS”) investigation, he was eventually charged with misconduct but no disciplinary action was taken against him. He was, however, reprimanded for his behaviour towards the Chief, UNON/SSS on one occasion.

4. The Kenya Police also conducted an investigation into the disappearance of the UN firearm. It requested the United Nations to waive the Applicant’s immunities. He was subsequently arrested and detained in custody by the Kenya Police for 4 days. The police found nothing to incriminate the Applicant.

5. When the Applicant was eventually returned to work at UNON he was transferred to a position with the Division of Conference Services (“Conference Services”) rather than to his former position as a Security Officer.

The Proceedings

6. The Applicant submitted two separate appeals to the Joint Appeals Board (“JAB”), one in November 2008 and the other in February 2009. These were consolidated by the JAB but before they could be considered by the JAB, they were transferred to the United Nations Dispute Tribunal (“the Tribunal”) on 1 July 2009 following the introduction of the new system of administration of justice.

7. The matter was referred to mediation by the Tribunal but this was unsuccessful and the case proceeded to a hearing on the merits.

Issues

8. The issues for determination are both factually and legally complex.
- a. Was the Applicant suspended on 26 May 2006 and, if so, was this lawful?
 - b. Was the placement of the Applicant on special leave with full pay on 29 May 2006 for an extended period in breach of staff rule 105(2)?
 - c. Did the United Nations follow the procedures set out in the relevant United Nations regulations and rules and administrative issuances with respect to the request by the Kenya Police to the United Nations to waive the Applicant’s immunity and in its response to his arrest and detention by the Police?
 - d. Was the reprimand of the Applicant for his refusal to hand over a loaded firearm to his supervisor unlawful in terms of the staff rules and the guidelines for investigation and done without due process or proper factual basis?

- e. Was the transfer of the Applicant from his position of Security Officer with UNON/SSS to Conference Services vitiated by lack of due process and in violation of the staff rules? and

- f. If any or all of these issues are found to be as alleged what remedies are due to the Applicant?

Summary of facts

This summary provides an overview of the facts in the case. These will be amplified in the discussion of each issue.

attended the scene and assisted him to find his firearm and the ammunition that had spilled out of it on impact. He was able to start his car and the police escorted him towards his home. The Kenya Diplomatic Po

where the Glock pistol had been found, the Police considered the two events (the incident reported by Mr. Kamunyi and the subsequent discovery of the Glock pistol) to be connected. They believed that Mr. Kamunyi may have been in possession of both his own and the UN firearm on the same night and they wished to interview him /201/2a-0.c 0 Tw 12

20. The Investigations Division, Office of Internal Oversight Services (“ID/OIOS”) then conducted two internal United Nations investigations. One was into the lack of controls in the UNON Armoury and related misconduct by senior staff members including Mr. Marshall. The other was an investigation into allegations of misconduct by Mr. Kamunyi arising from the plot against Ms. Tibaijuka and the suspicion that he had been involved in the theft of the UN firearm.

21. On 12 November 2007, the investigators reported that Mr. Kamunyi was possibly the author of the e-mail but the evidence was insufficient to make a conclusive finding against him. It found that he was possibly involved in the theft of the hand gun.

22. As a result of their reading some of Mr. Kamunyi’s e-mails the investigators believed that he had advised a private citizen to store a handgun in a private vehicle and did so himself in violation of Kenya law. It also concluded that his refusal to hand over his firearm to Mr. Marshall while he was on duty was not of the highest standards of competence and integrity. It recommended:

- a. That the Department of Security and Safety take appropriate action in regard to the conduct of UNON Security Officer Anthony Wahome Kamunyi; and
- b. That the Kenya Police be informed of the findings of this report for further investigation.

23. Based on the findings and conclusions contained in the ID/OIOS report, Mr. Kamunyi was not charged in relation to the theft of the firearm or the death threat but faced one formal charge of insubordination. He was then suspended from duty with pay on 4 February 2008. On 16 July 2008 he was advised by the Officer-in-Charge (“OIC”) of the Office of Human Resources Management (“OHRM”) that based on a review and analysis of the case she had decided not to pursue the case as a disciplinary matter. Instead Mr. Kamunyi was reprimanded for his refusal to hand

over his personal loaded firearm to his supervisor on 26 May 2006. He was also told that he was to be transferred from UNON/SSS to Conference Services.

24. The Kenya Police took no further action in the matter.

Issue 1.

25. Was the Applicant suspended on 26 May 2006 and, if so, was this lawful?

The Law

26. The former Staff Rules¹ apply in this case. Suspension of a staff member was covered in Chapter X on Disciplinary Measures and Procedures. Rule 110.2 of those Staff Rules stated:

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

27. Under paragraph 5 of ST/AI/371 (Revised disciplinary measures and procedures), if a preliminary investigation appears to indicate that a report of misconduct is well founded, the Assistant Secretary-General, Office of Human Resources Management (“ASG/OHRM”), on behalf of the Secretary-General,

¹ ST/SGB/2002/1 dated 1 January 2002.

33. On 26 May 2006, Mr. Kamunyi reported to work for his shift having been told earlier that Mr. Marshall wanted to talk to him. When he arrived, the Armoury was closed. Since 2005 he had been authorized by the UN Armourer, Benson Matetai, to deposit his private firearm at the Armoury and collect it after work. These deposits were recorded in a register from at least 15 February 2006. On this occasion, before he could surrender his private firearm at the Armoury, as he usually did before being issued with his UN firearm, he was asked by Security Officer (“S/O”) Joram Mkunde to come to the meeting with Mr. Marshall.

34. Before the meeting started S/O Mkunde told Mr. Marshall that Mr. Kamunyi was still wearing his private firearm. What followed was recorded on a small tape recorder which Mr. Kamunyi took to the meeting. He said he did this as he did not know what the meeting was to be about and had found the invitation to be a bit unusual.

35. There is no dispute that at this meeting Mr. Kamunyi refused to hand over his private weapon to Mr. Marshall when requested.

Case No. UNDT/NBI/2009/03

Judgment No. UNDT/2010/214

Mr. Kamunyi. From Ms. Tibaijuka's email I infer that she had been told he had been or was to be suspended but once it was realised that this was not correct Mr. Marshall changed the wording. The suspension was a unilateral action taken by him. It was not made by the ASG/HRM. As will be seen in the discussion of issue 2 the error was apparent to UNON/HRMS who later attempted to rectify it.

40. There is no authority for the removal of a staff member's ground pass while they are on special leave. Such removal is only lawful if the Secretary-General suspends a staff member under ST/AI/371.

Applicant's submissions

41. For the Applicant it was submitted that suspension is a disciplinary measure and only the Secretary-General has the power to suspend. In addition there is no authority for a verbal suspension. He relied on the mandatory requirements of staff rule 110(2). He alleged the suspension was fueled by improper motives and the decision should be declared null and void.

Respondent's submissions

42. It is the Respondent's case that Mr. Marshall's action of 26

rectified in the Staff Rules dated 2 September 2010² by the introduction of staff rule 10.4 on Administrative leave pending investigation and the disciplinary process.

44. In the present case however the suspension was not made in conjunction with a charge of misconduct. The decision was not made by the ASG/OHRM who was the properly delegated person at that time. In addition Mr. Kamunyi was not given a written statement of reasons for the suspension and it was of unlimited duration. On all counts it was an unlawful suspension.

45. The Tribunal acknowledges that Mr. Marshall had responsibility for the security of UNON and that there was a heightened awareness of security issues as a result of the death threat and loss of the UN firearm. The circumstances however did not justify the breach of the United Nations Staff Rules.

Issue 2

46. Was the Applicant lawfully placed on special leave with full pay (“SLWFP”) on 29 May 2006?

The Law

47. Staff rule 105.2 of the former Staff Rules concerned special leave. It was located in Chapter V of the former Staff Rules under the heading Annual and Special leave, which provided for annual leave, special leave and home leave.

48. Under staff regulation 5.2 special leave could be authorized by the Secretary-General in exceptional cases. Staff rule 105.2 stated:

- (a) (i) Special leave may be granted at the request of a staff member for advanced study or research in the interest of the United Nations, in cases of extended illness, for child care or for other important reasons for such period as the

² ST/SGB//2010/6.

Secretary-General may prescribe. In exceptional cases, the Secretary-General may, at his or her initiative, place a staff member on special leave with full pay if he considers such leave to be in the interest of the Organization.

(ii) Special leave is normally without pay. In exceptional circumstances, special leave with full or partial pay may be granted.

Additional facts on Issue 2

49. Five days after the suspension by Mr. Marshall, Mr. Kamunyi was given a letter from Mr. Elmi dated 29 May 2006 which stated:

“As a result of your meeting in Mr. Peter Marshall’s office on the evening of 26 May 2006, we wish to inform you that you have been placed on Special Leave with full pay, effective immediately and until further notice”.

50. Mr. Elmi told the Tribunal that he alone made a managerial decision to place Mr. Kamunyi on this leave. His reasons were that Mr. Marshall had complained to him about Mr. Kamunyi’s behaviour at the 26 May 2006 meeting and he thought he had enough information from talk around the compound to take immediate action. He believed that placing Mr. Kamunyi on SLWFP was a measure that would do no harm to either party but would prevent matters from getting worse. In light of the deterioration in the relationship between Mr. Kamunyi and Mr. Marshall as well as all the other matters he was hearing about, he considered that the situation was very tense and he made “a judgment call for the sake of peace”

51. When it was put to him that he did not have the power to make such a

u4reN006 Tc 0.0669m7d not.s7uD02 Tc f5o /P IMH.w 0 -1.725 TD[(49pwFG/d prevent ll f)1Tw -19.94

52. Mr. Elmi was not aware at that time that Mr. Kamunyi had had his ground pass confiscated by Mr. Marshall. He said that normally a person on special leave has the right to enter the compound. The record shows that Mr. Kamunyi's ground pass was conditionally returned to him in March 2007 after intervention from the Director of Administrative Services.

53. The special leave was granted "until further notice". Mr. Elmi said this was to avoid the necessity to have repeated extensions. He did not see it as an indefinite placement. He accepted that the reasons he gave in his letter could have been "more descriptive".

54. Mr. Elmi wrote to Mr. Kamunyi on 14 July 2006 confirming the decision to maintain Mr. Kamunyi on SLWFP until further notice. He informed him that the

for leave other than annual and home leave. These grounds do not include or refer to disciplinary measures.

66. The wider context is the location of the rule about special leave in the Staff Rules. It is found in Chapter V of the rules which deals with Annual and Special leave, not disciplinary measures and procedures. Later parts of staff rule 105.2 focus on family leave, military service in the armed forces of a State of which the staff member is a national, and for pension purposes. In none of these circumstances is special leave imposed unilaterally on a staff member.

67. Finally, the phrase “the interest of the Organization” is a constraint on the discretion of the Secretary-General to grant special leave. Such interests include the financial interests of the Organisation. In *Lauritzen*, UNDT/2010/172, it was held that (as) it is not in the interests of the Organization to keep a staff member on SLWFP for an extended period without assignment of work.

68. I conclude that the words “exceptional cases” relate to situations referred to earlier in the clause such as where the staff member is undertaking research that will benefit the United Nations, or where a valuable staff member is unable to perform his or her duties by reason of illness or child care obligations. It is not a catch-all which extends to Chapter X disciplinary measures. That Chapter has its own provisions for suspension.⁵

afer

Case No. UNDT/NBI/2009/03

Judgment No.

Case No. UNDT/NBI/2009/03

Judgment No. UNDT/2010/214

78. General Assembly resolution 76(1) provides that the categories of officials to which the provisions of Articles V and VII of the 1946 Convention apply should

staff member that person has a responsibility immediately to contact the senior legal adviser who will discuss it with the head of the office.

- d) Processing the request. An inquiry is undertaken at the duty station to ascertain the background to the request. This information is then transmitted to OLA at United Nations Headquarters, which is

85. The Designated Official at the duty station where the arrest or detention has taken place shall also immediately contact the Foreign Ministry of the government concerned seeking relevant information including the authority under which the arrest was made and access to the arrested person.

86. Where a case of arrest or detention of staff members of the United Nations or the organizations constitutes a clear violation of the privileges and immunities of the staff member concerned, and where, at the same time, the employing organization has not been able to fulfill its obligations toward the staff member, then heads of organizations with programmes in the country may be requested by the Secretary-General of the United Nations to suspend all operations, other than those of a purely humanitarian nature, and to cancel future missions until the situation is resolved.

Additional facts on Issue 3

87. When Mr. Marshall received news of the death threat in New York, he ordered his deputy, Mr. Bruce, to conduct an inventory of the Armoury. On 20 May it had been reported to Mr. Bruce that the firearms in the Armoury tallied with the register. No arms were missing. On 22 May another inventory was taken by the UNON Armourer. He reported that one weapon was missing

88. When he returned to Nairobi Mr. Marshall began with prfIP <nns with b60(Wmweayds of 02

94. Ms. Tibaijuka responded the same day to Mr. Marshall, with a copy to Chris Mensah and others. She wrote “I am by this memo requesting Sasha and Chris [Mensah] to provide me with a written brief on the following 3 issues: (1) SLWFP; (2) procedures for suspension with pay; and (3) the procedures for waiving the immunity of a s/m of the UN. Do we have to refer this issue to OLA or the SG?”

95. There is no evidence that either Ms. Russler or Ms. Tibaijuka received the advice they sought and no formal response was sent to Mr. Marshall authorising him to take any steps in relation to the waiver request.

96. On 9 June 2006, Mr. Marshall and Mr. Jasper went to the Police Station at the request of the Commissioner of Police who wished to discuss several issues including the ongoing investigation into the missing UN firearm.

97. Mr. Marshall wrote a note for the file after the meeting and expanded on it in oral evidence. According to him the Commissioner told him the Police did not think that Mr. Kamunyi’s story about 16 May 2006 was credible and they were going to this mlice Stat

94.

Case No. UNDT/NBI/2009/03

Judgment No. UNDT/2010/214

“We therefore do not have anything tangible to incriminate against your staff Mr. Anthony Wahome Kamunyi. You are therefore requested to handle his case administratively”.

105. In April 2007, UNON received another request from the Diplomatic Police Unit requesting to interview seven UNON staff members, including Mr. Marshall and Mr. Kamunyi, about the loss of the firearm and the death threat and to revisit the UNON Armoury to interview other concerned individuals. This request was passed on to Mr. Mensah and after referral to UNHQ a waiver was granted on a strictly voluntary basis and without prejudice to the privileges and immunities of the United Nations and its staff.

108. Next the Respondent submitted that neither Mr. Marshall nor any other officer of the United Nations acceded to the request for waiver. The Respondent relied on the evidence of Mr. Mensah, who expressed his legal opinion to the Tribunal that no proper request for the lifting of immunity had been made in this case because to do so would have required sending a formal communication to the Legal Counsel in the Office of Legal Affairs in New York Headquarters.

109. Thirdly, the Respondent submitted that in spite of Mr. Marshall's recommendation that the waiver should be lifted there is no evidence that he orchestrated or instructed the Police to carry out the interrogation or detention.

110. Finally, the Respondent questioned whether Mr. Kamunyi enjoyed immunity from arrest for the matters the Police was investigating. Under section 20 [*sic*] of the United Nations Field Security Handbook, privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individual themselves. It was submitted that the incident along Thika Road was not reported to the United Nations by Mr. Kamunyi nor did it happen in the course of discharge of his duties.

Conclusions on Issue 3

111. Although Mr. Kamunyi was locally recruited he was not paid an hourly rate and therefore was covered by Articles V and VII of the Convention.

112. Although Mr. Marshall had referred O/C Situma's 29 May 2006 request for the waiver of Mr. Kamunyi's immunity to both the Director-General and Mr. Mensah at UNON and to UNHQ there was no official response and Mr. Kamunyi was arrested without an official waiver or protest.

113. There are two possible explanations for the arrest occurring in the absence of a properly authorized waiver. The first is that Mr. Marshall expressly or impliedly

gave a purported waiver when he met with the Commissioner of Police on 9 June 2006. This is consistent with the letter written by the Deputy Commissioner of Police on December 2006. The second explanation, given by Mr. Marshall to the Tribunal, is that the Commissioner acted unilaterally on the basis that the Police believed that no waiver was required. This latter seems unlikely given that the Police had expressly sought a waiver before they took action and there is no evidence that Mr. Marshall made any protest or raised any objection to the arrest which he knew was imminent. At the most, from his account to the Tribunal he told the Commissioner that Mr. Kamunyi enjoyed some immunity.

114. I find that Mr. Marshall said enough to the Commissioner to give him the impression that waiver had been granted and that Mr. Kamunyi could be arrested.

115. In spite of Mr. Marshall's denial, I conclude that he was more involved in the detention and arrest of Mr. Kamunyi by the Kenya police than he has been prepared to admit for the following reasons:

- a. The correspondence from the Kenya Police points strongly to his involvement.
- b. He knew before the request for waiver was made that it was coming. This can only have been as a result of his discussions with the Police after Mr. Kamunyi refused to hand over his personal firearm to him.
- c. The Police thanked him for his cooperation at the time and in December 2006 recorded that their request for waiver had been granted. As Mr. Marshall was the only United Nations official with whom the Police were dealing with at the time it is highly probable that if the Police believed a waiver had been agreed it was because of what Mr. Marshall had said or agreed to.

116. At the very least, and taking the most benign view of Mr. Marshall's actions, the arrest went ahead with his fore-knowledge and without any protest by him. It is no coincidence that the request for waiver and the arrest followed Mr. Kamunyi's

refusal to surrender his private firearm to Mr

119. Once Mr. Kamunyi had been arrested an appropriate visit was made to him.

125. The Standards of conduct for the international civil service, quoted in ST/SGB/2002/13 on the Status, basic rights and duties of United Nations staff members, provides the following guidance/explanation on following directions from managers:

“International civil servants have to follow the instructions they receive in connection with their official functions and if they have doubts as to whether an instruction is consistent with the Charter or any other constitutional instrument, decisions of the governing bodies or administrative rules and regulations, they should first consult their supervisors. If they cannot agree, the international civil servant may ask for written instructions. These may be challenged through the proper institutional mechanisms, but any challenge should not delay carrying out the instruction. International civil servants may also record their views in official files. They should not follow verbal or written instructions that are manifestly inconsistent with their official functions or that threaten their safety or that of others.”

126. ST/AI/309/Rev. 2 on the Authority of United Nations Security Officers provides that:

“1. United Nations security officers function as agents of the Secretary-General to preserve order and to protect persons and property within the Headquarters area. All persons on the premises are expected to comply with the directions that may be issued by the security officers in the performance of their functions. Security officers, and all staff members, are expected to exercise their functions with courtesy and in conformity with established rules and regulations, including applicable local law.

2. Security officers are authorized to search persons, vehicles, handbags, briefcases or packages and to seize property if they have reason to believe that

3. Refusal to comply with directions issued by the security officers within their authority may result in removal from or denial of access to the premises and shall be reported by the Chief, Security and Safety Service, to the Assistant Secretary-General, Office of Conference and Support Services, for appropriate action.”

127. The United Nations Field Security Handbook¹¹, which became effective in January 2006, provides, in relevant part, that:

“1.2 Compliance with the policies outlined in this Handbook is mandatory; failure to comply with these policies and procedures could seriously endanger the lives of staff members and has implications for the liability of the organizations concerned.

6.27 The policy of the Organization with regard to the possession and carrying of firearms is that no United Nations staff member (including

guarded and secured weapons lockers where private weapons will be secured during working hours.”

128. In spite of these references in the Field Security Handbook, at the relevant time there was no policy concerning storage of private firearms in the Armoury at UNON although, as noted by the OIOS report of 8 April 2008, a Firearms Control register was maintained for individual security officers who carried personal fire arms.

129. Former staff rule 110.3(b)(i) states that the issuing of a reprimand is not a disciplinary matter. However, a reprimand stays on the staff member’s Official Status File along with any comments he/she may have had on the case.

Additional facts on Issue 4

130. The OIOS investigation report concerning Mr. Kamunyi was not released

136. In the course of this exchange Mr. Kamunyi accused Mr. Marshall of intimidating him, told him he did not have the courtesy to explain what was happening and that he was not listening to him. Mr. Marshall said it was not a discussion or a debate. He wanted compliance with his instruction.

176Mr. Marshallbatra dscribed Mr. K m

on wrong facts, other extraneous conclusions, factors and findings because no rules had been formulated by UNON about the use of private firearms.

142. The Applicant also submitted that it was contradictory to decide not to pursue an alleged act of insubordination as a disciplinary matter and then proceed to

inconsistent with a regulation of UNEP authorized by section 8 of the Headquarter Agreement, shall to the extent of such inconsistency, be applicable within the Headquarter seat.

146. By reason of the foregoing, and staff rule 10.4, the Respondent submitted that Appellant's conduct amounted to insubordination and the Office of the Human Resources Management was entitled to issue a reprimand to Applicant, which is an administrative, non-disciplinary measure.

Conclusion on Issue 4.

147. The following conclusions are made taking into account the acknowledged seriousness of the matters that UNON was facing at the time.

148. The first question is whether the Respondent had a reasonable and proper basis to find that Mr. Kamunyi had been insubordinate.

149. Mr. Marshall's opinion that Mr. Kamunyi was belligerent and aggressive is not supported by the tape recording which was played to the Tribunal during the hearing or with what I find to be the true and unedited verbatim transcript of this recording. At the most, for a very short time during the encounter both men raised their voices and were firm in their respective positions.

150. Mr. Kamunyi's refusal was not unconditional. He wanted to know why he was being asked to surrender the firearm and on what authority. The latter question was an important one. Mr. Kamunyi is a former Inspector of the Kenya Police, a firearms expert and a competitive shooter. He also adhered strictly to the firearm licensing laws. He wanted to be satisfied that this was a lawful instruction. It is clear from the transcript that Mr. Marshall said nothing to allay his fears. He put Mr. Kamunyi in the position of either refusing to comply with an instruction or, as Mr. Kamunyi saw it, acting in breach of the Firearms Act.

151. Mr. Kamunyi was a careful and responsible gun owner with a good knowledge of his duties and responsibilities in relation to his personal firearm licence. This was known to Mr. Marshall. Mr. Kamunyi was conscious of the dangers of disarming a firearm inside a closed room. He aired those concerns but was not answered except for the unequivocal order to comply.

152. In his statement made directly after the meeting at Mr. Marshall's request, Mr. Kamunyi fully explained his reasons for refusing. These were: his understanding of Kenya Firearms legislation; his concerns about the safety of unloading in the presence of others; and his belief that there were no restrictions on United Nations staff members carrying weapons into the UNON complex.

153. Whatever the rights and wrongs of these beliefs, I am satisfied that Mr. Kamunyi honestly believed that these were correct. Mr. Marshall had issued a standard operating procedure on 19 October 2005 concerning the carrying of firearms within UNON which stated that firearms were permitted on the UNON premises only in accordance with the SOP and that only United Nations security officers were authorized and permitted to carry firearms. It made no distinction between private and official firearms. Mr. Kamunyi had received authorisation to store his firearm at the UNON Armoury from the UNON Armourer

154. Mr. Marshall did nothing to reassure Mr. Kamunyi of the lawfulness of his request at the time. The law, as subsequently revealed, is a complex mix of domestic and United Nations legislation. The Respondent was unable to point to any lawful authority for Mr. Marshall to demand the handing over of the firearm to him personally other than the general maintenance of security at UNON.

155. The Respondent's allegation that he posed a security threat that needed urgent action is undermined by Mr. Kamunyi's ready willingness to sit for over an hour to give a rational explanation for his actions once given the opportunity.

The Law

165. Staff regulation 1.2(c) provides that:

“Staff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations. In exercising this authority the Secretary-General shall seek to ensure, having regard to the circumstances that all necessary safety and security arrangements are made for staff carrying out the responsibilities entrusted to them.”

Additional facts on Issue 5

166. In August 2008, after the investigations about Mr. Kamunyi and the associated investigation into the Security Service at UNON had ended, a meeting took place in New York between the Department of Security, the Director-General of UNON and OHRM. It was decided that there was not sufficient evidence revealed in the OIOS report to proceed with the charges against him and it was in the best interests of Mr. Kamunyi for his suspension to be lifted and for his return to work.

167. However, it was also decided that he should not return to the Department of Security and another post would be found for him. Mr. Mensah was involved in this decision. He facilitated Mr. Kamunyi's reassignment at UNON. He said that DSS was very uncomfortable with him returning to work there and so an alternative position was found for him with Conference Services. Mr. Kamunyi was not consulted about this but advised of his new position once it had been decided

168. The position at Conference Services was at the same level as his previous position at Security. Mr. Kamunyi accepted that he had received the same payments and other entitlements as before but felt prejudiced because he had been removed

from his field of expertise and the career progression he had expected. He has continued to work in that capacity since that time.

Case No. UNDT/NBI/2009/03

Judgment No. UNDT/2010/214

suspension and removal without authority from access to his work place caused him embarrassment and frustration.

192. In addition to these are the effects of the arrest by the Kenya Police. The Respondent's submission that ultimate responsibility for arrest lies with the police is accepted but this does not relieve the Respondent from responsibility for the harm, both mental and physical which was caused to Mr. Kamunyi by its failure to follow the correct process for the request for waiver.

193. There is a real chance that had the waiver request been correctly processed by the United Nations the arrest may either not have occurred or would have been subject to conditions which would have mitigated its effect. He suffered some physical effects of being held in custody. He is left with a permanent record of arrest even though he has not faced any criminal charges. He will be faced with explaining the fact of his arrest in future applications for promotion or employment. As a former senior Police Officer who has built his career in security this is a serious and lasting impact. For these reasons I find that this is an exceptional case which justifies the payment of more than two years' net base salary.

194. In relation to costs it is acknowledged that this case has had an unfortunately long and difficult history including interruptions by the changes to the UN internal justice system. It has taken a long time for it to come before the Tribunal however there is no evidence that either party was responsible for this delay or that there was any abuse of the Tribunal's process. There are no circumstances to justify the award of costs.

195. It is clear that the actions of several UN officials were unlawful, careless or negligent. It is for the Secretary-General to take any disciplinary or other steps in the light of the findings in this judgment and in the interests of the maintenance of the Rule of Law in the UN.

The Tribunal orders:

196 The rescission of the unlawful decisions to suspend

