

Original: English

Before:

# Introduction

1. In Klein UNDT/2010/207, the Dispute Tribunal fountidater alia, that the release to Member States of a summary followed investigation report regarding the Applicant was in breach diffis terms of appointment, albe Respondent failed to reasonably exercise the distance to withhold or modify it. The parties subsequently filed further submissions on appropriate of The present Judgement addresses the matter of relief to be ordered in view office Tribunal's findingson liability in Klein UNDT/2010/207.

2. The Applicant seeks retraction or revision/inthe investigation report, a public statement from the Respondent "apologizing the misinformation and affirming his unblemished record of service", removal of any adverse material that may be in the Organization's files, and rhancial compensation for **peniary** and non-pecuniary loss resulting from the violizon of his due process rights amage to his reputation, and emotional distress.

## Facts

3. The relevant facts asset out in full inKlein UNDT/2010/207. The summary of facts, below, is provided for ease of reference.

4. Between February 1996 and Ap2005, the Applicant led three United

Applicant of all allegations. In April 2005, OIOS received a separate complaint alleging that the Applicant had an "inopper relationship" with "a Liberian woman who [allegedly] had links with Charles aylor" and that he had misused United Nations assets by facilitating the provision air transport to women who did not work for the United Nations. OIOS commenced a separate investigation into these allegations (OIOS Investigation Division Case No. 0176/05).

6. On 24 October 2005, OIOS issued its re

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his reputation through the release of a peiged and confidential investigative report, resulting in its wide public disseminati". The JAB recommended that the Applicant be paid one year's thebase salary as compensationithwinterest, and that he be issued a letter of apology. By letter from the Deputy Secretary-General, dated 30 June 2009, the Respondent acceptedtheatApplicant's due process rights had been violated because he was not madereator the scope of the alleged misconduct and he was not given the opportunity torther rebut the allegations prior to the finalisation of the Second Refer. The Secretary-Generadon this basis, paid the Applicant one year's net base salary as compensation, which the Applicant accepted without prejudice to hsi right of appeal.

## Applicant's submissions

12. The Applicant's main contentions on relief may be summarised as follows:

a. There is at present no public reconfidthe Applicant's refutation of the charges, of the Respondent's retranctiof them, and of the Applicant's exoneration, which causes him ongoingrm. The Applicant seeks the Tribunal to order "rescission of the docent in question as well as a public statement acknowledging and correctiting error". Further, any adverse material improperly maintained in th@rganization's filesmust be removed pursuant to ST/AI/292 (Filing of adversent)

b. The circumstances of his abru**pe**parture and the misinformation contained in the Second Report have affected the Applicant's professional reputation and his prospector further employment. Despite his efforts, he has had no steady employment since 2005 apart from occasional teaching and speaking engagements **aprob** bono consultancies;

c. The one year's net base salary already paid to the Applicant is inadequate to fully compensate him fibre breach of his rights. The high publicity and continuing harm entailed the refusal of the Respondent to

rectify the errors constitutes exceptional circumstances warranting compensation in excess of the statytomitation of two years' net base salary;

d. With respect to his actual economic loss, the Applicant submits that, if not for the circulation of the Executive Summary in February 2008, he would have continued to be employed at a **lexem** parable to the level he had prior to his departure from the Organization and the Applicant's salary at the time he left the Organization in 2005, he should be compensated for the loss of earnings by an award of USD511,880, less the one year's net base salary previously paid, or USD383,910;

e. With regard to non-pecuniary harm, the negative effects on the Applicant were aggravated by the release of the report to third parties despite the knowledge "that it wasstablished practice [of etse parties] to publish such reports on the [I]nternet". Furthethe Applicant has suffered emotional distress and extreme personal embarrassment. The Applicant's personal integrity has been questioned in maanner calculated to cause extreme embarrassment to him and his family. An award of moral damages in the amount of USD100,000 is appropriate.

Respondent's submissions

13. The Respondent's main contentions one feating be summarised as follows:

a. It would appear in light oFarraj UNDT/2010/070 that the power to order specific performance does noteend to requiring revision or retraction of a document which is not part of ethApplicant's personnel file or working file of organizational units of the Orgization. Further, the proposal to retract or revise the document is not a practise lution as the document is in the public domain on the Internet. Such and errcould not be executed in light of the impossibility of controlling the active of third parties. The only practical

18. As the examples of corrective **aurti** ordered above demonstrate—and as confirmed by the Appeals Tribunal in Fröhler 2011-UNAT-141, Appell**201**1-UNAT-143 and Kaddoura2011-UNAT-151—the Tribunalis vested with the statutory power to determine, in the circumstances of each case, the remedy it deems appropriate to rectify the wrong suffered **tbye** staff member whose rights have been breached.

19. As found in KleinUNDT/2010/207, the Respondent has certain obligations towards staff members in relation to intigentiation processes, chuding, pursuant to General Assembly resolution 59/272 (Reave of the implementation of General Assembly resolutions 48/218B and 54/244e, dbligation to reasonably exercise the discretion to withhold or ordify investigation reports requested by the Member States of the Organization, in appropriate umstances. This specific obligation in relation to investigation processes and reports well as the general obligation of good faith and fair dealing (seesaad2010-UNAT-021, Bertucc2011-UNAT-121, James UNDT/2009/025, D'Hoog HNDT/2010/044, Gaskins UNDT/2010/119 and Goddard UNDT/2010/196), require the Organization to only produce, maintain and disseminate investigation reports thatverabeen created in accordance with the requirements of fairness and due procests enternt in this obligation is a corollary obligationnot to produce, maintain or disseminate improperly created material. While sometimes improper dissemination of such material cannot be undone, there are steps that can be taken towards undoing its effects.

20. Having carefully considered the partiessibmissions, the Tribunal finds that, in the circumstances of the present careecission of the descion to disclose the Executive Summary would not restore tsteatus quo ante and would not provide adequate relief to the Applicant. Simily, the Tribunal finds that monetary compensation alone would not provide the parties.

21. The Tribunal finds it approprize te, in the particular circumstances of this case, to order corrective action, in addition **to**onetary compensation discussed and

ordered below. Such action can be made at little cost to the Respondent, with a significant benefit to the Aplipeant. The Tribunal finds itsppropriate to require the Respondent to send a statement to threaesal/lember Statesthat received the Executive Summary, attaching a copy of the present Judgment Katerid UNDT/2010/207 together with an appropriate attement, as ordered below. Further, in the interests of justice, and inview of ST/AI/292, the Tribunal will make appropriate orders to ensure the renhoon/a any adverse material—including the Second Report and the Executive Summary—that may exist in the Applicant's personnel records and in the working filesoon/anizational units of the Organization with regard to the matters raised in the Second Report (Mageazaki UNDT/2009/076, Applicant UNDT/2010/069, Zerezghi UNDT/2010/122, Garcia UNDT/2011/068).

22. The Tribunal further finds that the reflierdered in the present Judgment is sufficient to fully compensate the Appetint for the harm suffered. Therefore, the Tribunal does not need to consider whetate order for an apology is permitted by art. 10.5 of its Statute (seeAppellant 2011-UNAT-143 and Applicant UNDT/2010/148).

### Actual economic loss

23. The Applicant submits that he has had no steady employment, apart from occasional teaching and speaking engagementsprorted no consultancies, since his separation from service in 2005. He says heSpeTd lcondn the ae Exeervice7ponhichts tdidi

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that "a friend of [the Director] was toldy someone there that [the Applicant was] under a cloud from Liberia, so the Missionould not support [his] nomination" in relation to the position in Cyprus. The Tribunal finds that that this email borders on speculation based on hearsay. This email ather communications provided by the Applicant are not sufficient to persuathee Tribunal that, if not for the improper release of the Executive Report, the Applit would have been selected for the position of Special Representative in Cyprus.

25. The Applicant also submitted documents indicating his interest in working in other high-level positions. Although they **nde** nstrate the Applicant's interest, these documents do not constitute sufficient evictenthat the Applicant was not selected for any of these positions as a result the established breach of his rights. The evidence tendered in support of the Applicanclaims of actual economic loss is vague, and mostly consists of corresponde from the Applicant himself. As the Tribunal stated irFayek UNDT/2010/113 and Fayek UNDT/2010/194, in assessing compensation, certain assumptions can be made, but they must be reasonable. In this instance, the Tribunal is requested to dspeculative assumptions and conclusions about the Applicant's actual economic loss.

26. Accordingly, the Tribunal finds that the Applicant has failed to persuade it that his failure to be permanently excepted since 2005 was a direct result of the breach identified in Klein UNDT/2010/207. Therefore, the Fribunal is unable to conclude that the Applicant suffered acter actor actor based on his submissions and the documentation tendered, and no conseption shall be awarded under this head of damage.

## Non-economic loss

27. The amount of one year's net base sapare yiously paid to the Applicant was awarded only in relation to the procedural violations in the finalisation of the Second Report, and not in relation the improper disclosure of the Executive Summary to Member States. This follows from the Deputy Secretary ceretary ceretary for the second secretary for the second second

regard, the JAB Report, which referredtite Applicant's "shocked" reaction to the disclosure of the Executive Summary. Admittally, it is apparent to the Tribunal that any reasonable person would inevitably sufferious anxiety and emotional distress if put through the same ordeal. Furtimere, as the Tribunal stated Kalein UNDT/2010/207, the Respondent's failure reasonably exercise the discretion to withhold or modify the procedurally flawed docurent resulted in "aserious personal and professional blight on the Applicant's actacter". In light of the aforesaid, and considering the publicity and continuous harawsed to the Applicant, the Tribunal is therefore satisfied that the Applicant's submissions regarding the negative effects of this proven breach are not merely speculative (Cheen 2011-UNAT-107).

31. Having given due and careful consideoratto both parties' submissions and the record, the Tribunal finds that the Applicant should compensated by an award of USD60,000 for the emotional distrested aanxiety suffered by him as a result of the Respondent's actions, as well as for the damage caused to his reputation (see Shkurtaj 2011-UNAT-148, Shkurtaj UNDT/2010/156, and former United Nations Administrative Tribunal Judgment No. 102B angoura (2001)). This sum is in addition to the one year's net base satalready paid to the Applicant in connection with the separate issue of procedural violations committed during the preparation of the Second Report.

## Orders

32. The Second Report, the Executive Summy and any other adverse material pertaining to the matters raised in tSecond Report shall breemoved from the Applicant's personnel file and any workinfiges maintained by organizational units of the Organization.

33. Within 60 days of the date this Judgmtheecomes executable, the Respondent shall send a statement to the Memberesstalinat received the Executive Summary, attaching a copy of the present Judgment & Medin UNDT/2010/207 and an accompanying statement that: (i) the Tribunal found the Second Report and the

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