
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2012/032

Judgment No.: UNDT/2012/075

Date: 28 May 2012

Original: English

Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pelé Fomété

DIOP

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT ON APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for the Applicant:

Alexandre Tavadian, OSLA

Louis-Philippe Lapicerella, OSLA

Counsel for the Respondent:

Bérengère Neyroud, UNOG

Bettina Gerber, UNOG

14. Receiving no further information from UNODC, the Applicant approached the Minister of Justice in Mali to enquire as to the nature of the complaint against him. The Minister expressed surprise and on 16 February 2012, sent the Applicant a formal letter stating that his office had never sent any email to UNODC complaining about the

\$SSOLFDQW¶V ZRUN RU DVNLQJ WKDW KH EH UHPRYHG IU

15. The Minister of Justice of Mali also signed a testimonial, stating his complete satisfaction with the work of the Applicant.

16. 7KH 7ULEXQDO¶V -XGJPHQW 81'7 ZDV LVVXHG

23 February 2012, the Applicant received an email from Mr. Schmidt, with the subject

KHDGLQJ ³&RPSODLQV >VLF@ IURP JYW RIILFDOV GRQRU

17. 7KH HPDLO SUHVHQWV D FDWDORJXH RI FULWLFLV

performance as a Project Coordinator ² dating well back into the previous year ² and also about his relations with his colleagues and staff in UNODC. The email invites the Applicant to respond to the allegations. In his response, the Applicant expressed surprise

DW WKH WLPLQJ RI WKH PHVVDJH DQG an Accpt for LDWHG WKD UHWDOLDWH´

18. OQ 0DUFK WKHUH ZDV D FRXS G¶pWDW LQ 0D

Applicant was evacuated. He was redeployed in the Regional Office in Dakar, Senegal and began working there on 10 April 2012.

19. On 7 May 2012, Mr. Schmidt received an email from a representative of the Embassy of Denmark in Mali, one of the main donors funding the PNI, who stated that

³>W@KH FXUUHQW VLWXDWLRQ FDOOV IRU SUXGHQFH LQ

and I believe it calls for a total suspension including of the contracts held by international

VWDII´

25. The Applicant also argues that insofar as the Respondent took the decision as a result of the comments of the two donors, this amounts to the fettering of the

5HVSRQGHQW¶V GLVFUHWLRQ DQG LV XQODZIXO DV VXF

ample reason to suspect that this is a case of retaliation and/or pure prejudice in the decision-making process, given the history of the case.

34. The Tribunal is disturbed that the Respondent has chosen to flout its Judgment

No. 81'7

E\ VHHNLQJ QRW WR UHQHZ WKH \$SSOL

management evaluation is still pending in respect of the First Decision of 9 February. The

Tribunal considers that if the Respondent believes that some *novus actus interveniens*

such as a FRXS G¶pWDW VR DOWHUV WKH SRVLWLRQ RI WKH 3

the previous Order, then the appropriate response is to approach the Tribunal for

assistance. Simply to proceed with an alternative scheme for separating the Applicant is

not only an act of contempt, but invites the Tribunal to consider that move to be tainted

by extraneous motives.

35. In *Gaskins* UNDT/2010/119, the Tribunal held that it was wrong for the

\$GPLQLVWUDWLRQ WR YLRODWH D VWDAI Member State U¶V ULJKV

The circumstances in *Gaskins* were not the same as in the present case, but nonetheless it

is true that, according to the bilateral agreements between the donors and the UNODC,

personnel recruited to work on the project do so under contracts regulated by the Rules,

Regulations and directives of the United Nations. Thus it is not appropriate for a Member

State, be it a donor or otherwise, to interfere with those contracts.

36. The United Nations has staff operating in many hazardous and volatile locations

and it is therefore common that staff must cease their local work and be evacuated, just as

occurred with the UNODC staff in Mali following the coup. The

- a. reassignment, temporary or otherwise, of the staff member together, as applicable with his/her eligible family members;
- b. travel to the home country

48. The Tribunal reiterates its remarks in Diop UNDT/2012/029 that whereas mere economic loss deriving from the loss of employment can be compensated in damages, there is more to the harm caused by the non-renewal of a contract than that. There is a loss of career prospects, loss of self-esteem, and unquantifiable potential harm to the

49. This Tribunal has no difficulty in concluding that the deprivation of employment in the present case, motivated as it appears *prima facie* to be by bias, prejudice and bad faith, will cause irreparable harm to the Applicant.

Conclusion

50. The Application is granted. The Respondent is ordered to suspend the Second Decision not to renew the ~~SOLE FOMÉTÉ~~ management evaluation of the Second Decision.

(Signed)

Judge Vinod Boolell
Dated this 28th day of May 2012

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

(Signed)

Jean-Pelé Fomété, Registrar, UNDT, Nairobi