

UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2013-UNAT-337

Leal
(Respondent/Applicant)

v.

Secretary-General of the United Nations
(Appellant/Respondent)

JUDGMENT

Before: Judge Inés Weinberg de Roca, Presiding
Judge Richard Lussick
Judge Rosalyn Chapman

Case No.: 2012-374

Date: 21 June 2013

Registrar: Weicheng Lin

Counsel for Respondent/Applicant: Seth Levine

Counsel for Appellant/Respondent: Rupa Mitra

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by the Secretary-General against Judgment No. UNDT/2012/101, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 29 June 2012 in the case of *Leal v. Secretary-General of the United Nations*. The Secretary-General appealed on 31 August 2012, and Mr. Fernando Menoita Leal answered on 8 November 2012.

Facts and Procedure

2. Mr. Leal joined the Office of the United Nations Security Coordinator (UNSECOORD) as a field security officer under an appointment with the United Nations Development Programme (UNDP) in June 2000. He was reassigned to the Department of Safety and Security (UNDSS) with its Security Office in Maputo, Mozambique, as a field security advisor at the L-4 level in November 2003.

3. Following a complaint lodged in November 2007 by a national of Mozambique, Mr. Vas, alleging that Mr. Leal had hired him to work in the UNDSS Maputo security office for two months without a contract and had promised to give him permanent employment, the UNDP Office of Audit and Investigation (OAI) conducted a field investigation in Mozambique during the period 20-29 February 2008. However, Mr. Leal had already left Mozambique earlier in February 2008 on assignment to Juba, South Sudan. He was not made aware of the investigation.

4. On 28 February 2008, the OAI sent Mr. Leal a notice of investigation. Mr. Leal contends not to have received this notice. He responded to OAI's third notice of investigation on 9 May 2008, which advised Mr. Leal that he was being investigated for having "abused [his] authority and misappropriated certain property belonging to UNDSS and UNDP". The notice of investigation gave no further detail about the nature of the said investigation. On 5 June 2008, OAI instructed Mr. Leal to travel to Johannesburg, South Africa, for an interview but did not inform the latter that he could bring an observer to the interview as per the OAI guidelines. Mr. Leal's interview with the OAI investigators took place on 19 June 2008, without the presence of any observer.

5. On 16 December 2008, Mr. Leal received the investigation report of the OAI for comments, which he provided. In April 2009, he was charged with permitting Mr. Vas to work in the Maputo security office without a contract, instructing the workers engaged in

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Considerations

15. The Dispute Tribunal rejected Mr. Leal's claim for reinstatement, compensation and removal of the adverse material from his personnel file.

16. Nonetheless, the Dispute Tribunal considered that Mr. Leal's due process rights were violated and that the sanction was disproportionate.

17. In *Mahdi*,¹ this Tribunal held:

In reviewing disciplinary cases this Court has to examine the following: i. Whether the facts on which the disciplinary measure was based have been established; ii. Whether the established facts legally amount to misconduct under the Regulations and Rules; and iii. Whether the disciplinary measure applied is proportionate to the offence.

18. The Appeals Tribunal is not bound by the jurisprudence of the former Administrative Tribunal, although in appropriate cases its judgments concerning disciplinary proceedings may have non-binding persuasive value.² However, while exercising judicial review, due deference must be shown to the Secretary-General's administrative decisions because Article 101(3) of the Charter requires the Secretary-General to hold staff members to

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