







her transfer to MovCon. However, the Secretary-General declined to accept the recommendation of the majority to impose the disciplinary measure of a loss of two steps in grade for favouritism, and decided, due to the severity of his misconduct, to demote Mr. Powell by one level with no possibility of promotion for two years. On 5 September 2007, Mr. Powell was demoted to the FS-4 level.

11. Mr. Powell filed an application with the former United Nations Administrative Tribunal, contesting the decision to demote him by one level with no possibility of promotion for two years. The case was subsequently transferred to the UNDT which issued its Judgment on 28 March 2012.

12. The UNDT found that the facts on which the impugned decision was based were not established and ordered its rescission. The UNDT awarded Mr. Powell the difference between the salary and entitlements of an FS-4 and an FS-5 post staff member from 20 August 2007 to the date of the Judgment.

13. In addition, the UNDT found that there were several material procedural irregularities. The UNDT found that the two purportedly preliminary investigations carried out by the BOI and the SEA Investigation Team amounted in fact to formal investigations and that the Organization breached Mr. Powell's due process rights by not affording him the due process rights that apply at the formal investigation stage. For material breaches of Mr. Powell's due process rights, the UNDT awarded him compensation in the amount of one year's net base salary at the FS-5 level.

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(c) Notify the staff member of his or her right to the advice of another staff member or retired staff member to assist in his or her responses; and offer information on how to obtain such assistance.

If the Secretary-General authorizes suspension, the staff member shall be informed of the reason for the suspension and its probable duration ...

7. The staff member should be given a specified time to answer the allegations and produce countervailing evidence, if any. The amount of time allowed shall take account of the seriousness and complexity of the matter. If more time is required, it shall be granted upon the staff member's written request for an extension, giving cogent reasons why he or she is unable to comply with the deadline. If no response is submitted within the time-limit, the matter shall nevertheless proceed.

23. Obviously, all of the due process rights provided in former Staff Rule 110.4 and ST/AI/371 cannot apply during the preliminary investigation because they would hinder it. These provisions only apply in their entirety once disciplinary proceedings have been initiated.<sup>1</sup>

24. During the preliminary investigation stage, only limited due process rights apply. In the present case, the UNDT was correct in finding that there was no breach of Mr. Powell's due process rights at the preliminary investigation stage in that, by 21 December 2004, Mr. Powell had been apprised of the allegations against him and had been given the opportunity to respond.<sup>2</sup>

25. However, the UNDT then fell into error in finding that the BOI and SEA investigations were final investigations. The BOI, after completing its investigation, delivered its report on 13 January 2005. The SEA report, after completion of the investigation, was delivered on 26 February 2005. Mr. Powell was not charged with four instances of alleged misconduct until 28 March 2005. The two investigations therefore preceded the bringing of disciplinary charges,

**THE UNITED NATIONS APPEALS TRIBUNAL**

Judgment No. 2013-UNAT-295



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