





7. Mr. Nasrallah appealed this decision to the UNDT, which, on 21 February 2012, held a hearing. Thereafter, on 3 May 2012, the Dispute Tribunal issued an “Order for Further Disclosure”,

... A staff member in New York pleaded guilty to possession of khat and was sentenced to a year's probation, and fined USD 1000; he was also found guilty of having

15. Finally, the Secretary-General requests that the Appeals Tribunal reverse the Judgment in its entirety.

**Mr. Nasrallah's Answer**

16. Mr. Nasrallah acknowledges his misconduct deserved “some sort of a disciplinary sanction”, but asserts that he deserves to remain in service.

17. He contends that the decision to separate him from service was disproportionate when reviewed against the outcome of similar cases, “especially since [he has] already paid his dues to [the] government and ... society”.

**Considerations**

18. It is not contested that Mr. Nasrallah, a Language Assistant with UNIFIL, joined the United Nations on 23 July 2007.

23. In *Masri, Maslamani and Haniya*,<sup>2</sup> this Tribunal held that, “when reviewing a disciplinary sanction imposed by the Administration, the role of the Tribunal is to examine whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct, and whether the sanction is proportionate to the offence”.<sup>3</sup>

24. In *Cabrera*, the Appeals Tribunal held that it would not substitute its own judgment in the case, finding:

Under the circumstances we agree with the UNDT that the conduct was established and that it was serious. Though perhaps the Secretary-General, in his discretion, could have come to a different conclusion, we cannot say that the sanction of summary dismissal was unfair or disproportionate to the seriousness of the offences. The UNDT refused to substitute its judgment in this case, and this Tribunal must be deferential not only to the Secretary-General, but also to that Tribunal, which is charged with finding facts.<sup>4</sup>

25. Furthermore, in *Aqel*, the Appeals Tribunal stated:

Having established misconduct and the seriousness of the incident, the Appeals Tribunal cannot review the level of sanction imposed. Such a decision, which falls within the remit of the Commissioner-General, can only be reviewed by the Appeals Tribunal in cases of obvious absurdity or flagrant arbitrariness, which has not been established.<sup>5</sup>

26. This case does not differ from the cited precedents. Mr. Nasrallah committed serious misconduct, for which he was separated from service with compensation in lieu of notice and termination indemnity. The Appeals Tribunal is satisfied that this sanction was not disproportionate and notes that the Secretary-General could have chosen to summarily dismiss Mr. Nasrallah, as foreseen in then-applicable Staff Rule 110.4(b)(ii), or to separate him without compensation and indemnities.

---

<sup>2</sup> *Masri v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-098; *Maslamani v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-028; *Haniya v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-024.

<sup>3</sup> *Masri, ibid.*, para. 30.

<sup>4</sup> *Cabrera v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-089, para. 27.

<sup>5</sup> *Aqel v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-040, para. 35.

27. Having decided that the sanction was not disproportionate, we now turn to address the conduct of the Administration. In spite of the fact that no investigation was necessary, as the facts were not contested, the Organization committed an egregious error in taking almost two years to finalize the disciplinary proceedings. This Tribunal does not consider this undue delay to have prejudiced Mr. Nasrallah, however. Rather, it worked in his favour, permitting him to benefit from nearly two years' further service, with full salary, and delaying his termination.<sup>6</sup>

28. Pursuant to Article 9(5) of its Statute, the Appeals Tribunal may refer appropriate cases to the Secretary-General of the United Nations for possible action to enforce accountability. We consider that the severity of the delay in the disciplinary proceedings in the instant case merits such referral and call upon the Secretary-General to enforce accountability of the responsible officials. Accordingly, we instruct the Registrar to transmit a copy of this Judgment directly to the Office of the Secretary-General.

### **Judgment**

29. We vacate the UNDT Judgment in its entirety.

---

<sup>6</sup> See also *Abu Jarbou v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-292, para. 45.

Original and Authoritative Version: English

Dated this 28<sup>th</sup> day of March 2013 in New York, United States.

*(Signed)*

Judge Weinberg de Roca,  
Presiding

*(Signed)*

Judge Faherty

*(Signed)*

Judge Lussick

Entered in the Register on this 24<sup>th</sup> day of May 2013 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar