

- b. The Administration had presented sufficient evidence to support the charge that the Applicant extorted money from the cleaners and attempted to extort a commission from Mr. Zaid, which amounted to serious misconduct warranting the Applicant's summary dismissal.
- c. The Panel noted with concern that in cases such as the present, where potential witnesses to a case are not staff members but contractors or their respective employees, the Organization has no means to compel these witnesses to cooperate in the investigations and to appear as witnesses in cases. In the Panel's view, the current case clearly illustrates the necessity for the Organization to consider adopting a policy to this effect.
- d. The present case further illustrated the necessity of a policy that puts in place appropriate procedures for the reporting of suspected misconduct and the conducting of searches by security guards under clearly specified circumstances.
- e. The Panel recommended by a majority: that the decision to summarily dismiss the Applicant be upheld; that UNHCR put in place a policy and appropriate procedures for reporting suspected misconduct and for conducting searches in a timely and appropriate manner; and that UNHCR introduce a policy

c. Under the circumstances, with due regard to the fact that UNHCR had reasonable discretion in determining what disciplinary measure to be imposed on a staff for misconduct and the fact that it is not the function of the JDC to substitute its views for those of the UNHCR, this Member recommended that the Applicant should be reinstated but with appropriate disciplinary action imposed to the extent that the evidence supports the misconduct that is:

- i. Reduction in one level grade;
- ii. Letter of censure;
- iii. No supervisory functions;
- iv. A mandatory training on core UN principles of tolerance for cultural diversity, professionalism and integrity along with training in “effective communication and teamwork”.

d. UNHCR should seriously consider putting in place a policy and appropriate procedures for reporting suspected misconduct and authorizing the conduct of appropriate timely and lawful searches on UNHCR’s premises of persons under suspicion.

e. UNHCR should consider introducing a policy that obligates all vendors/contractors and their subsidiaries, agents, intermediaries and principals to cooperate with the Organization during any investigative processes undertaken by it either before, during or after execution of a contract, including providing all required documents, company records, access to employees, officers and staff, as well as financial information.

f. UNHCR should consider referring cases where facts are in dispute for the review of the JDC (or appropriate body) under the relevant Staff Rules for recommendation of appropriate disciplinary action rather than taking such drastic action as summary dismissal.

g. UNHCR should review its investigatio

- d. Mr. Essam Mamdouh Aly – Employee of a company in Cairo which supplied stationery to the UNHCR/RO.
 - e. Mr. Mohammed Adbu Abdelrahman – A driver with the UNHCR/RO between 1975-October 2006.
 - f. Mr. Mohammed Mahfouz - An independent electrician and contractor who maintained the UNHCR/RO's electrical equipment at the material time.
 - g. Mr. Sabry Said Ahmed - A security guard with the UNHCR/RO.
 - h. Ms. Stephanie Rinvile - Senior Regional Administrative and Program Officer of the UNHCR/RO at the material time who testified via telephone.
 - i. Mr. Yehyeh Ragab – Cleaning supervisor at the UNHCR/RO. He was employed by two companies which provided cleaning services to the UNHCR/RO at the material time.
 - j. Ms. Rania El Guindy – The then Senior Protection Clerk at the UNHCR/RO who undertook the initial fact-finding investigation of the allegations made against the Applicant.
 - k. Ms. Hayam El Guindy – The then Assistant Administrative Officer at UNHCR/RO at the material time. Ms. El Guindy testified via telephone.
17. Counsels for the Respondent and the Applicant filed their closing submissions on 9 and 14 December 2010 respectively.

Applicant's Case

18. The summary dismissal of the Applicant

management. He was in service for 27 years within which five different supervisors gave him good reviews.

19. There is a lot of hearsay evidence against him. Those who worked with him did not know him to be bad and notorious. He was a strict supervisor and he had a good relationship with the cleaners. He had never stolen; he was not notoriously dishonest, never asked for kickbacks, never extorted and had no opportunity to extort. This proceeding was precipitated by false reports made by those against him. The Applicant was told that he would be rewarded if he did not appeal the findings of the JDC.

20. It was submitted on the Applicant's behalf that the Dispute Tribunal should be vigilant in admitting hearsay evidence. In this respect, the Applicant refers to the judgments in *Masri*² and *Kasmani*³ and requests the Tribunal not to admit untested evidence. The correct statement of law regarding the burden of proof in disciplinary proceedings is contained in *Masri* and *Cohen*⁴

- b. Both Ms. Hayam El-Guindy and Ms. Rania El-Guindy had no recollection of efforts made to contact UNHCR/RO's suppliers to hear directly from them.
 - c. There was direct evidence before the Tribunal from a UNHCR/RO supplier, Mr. Aly, that he was never extorted by the Applicant and that the Applicant had no control over him and that he was not afraid of the Applicant.
23. With respect to the charge of extortion and attempted extortion of repair contractors, the Applicant submitted that:
- a. No direct evidence of any extortion/attempted extortion from any repair people was presented to the initial fact-finding investigator or even to the Tribunal. There was also no direct evidence from victims or witnesses of money changing hands and no demands were 5ds and no dema

24. With respect to the charge of extortion and attempted extortion of cleaners the Applicant submitted that:

a. There was no direct evidence of any such demands. The only direct evidence by Mr. Ragab, another cleaning supervisor, was that Mr. Gamel Abdel Kader, had asked him (Mr. Ragab) for money and that the Applicant later asked Mr. Kader whether he had done so.

b. No direct evidence was obtained from the alleged victims. There was no evidence of any efforts made to contact the alleged victims. The initial fact-finding investigator, Ms. Rania El-Guindy said that she was told by Ms. Hayam El-Guindy that they could not be reached and no efforts were made to reach them.

c. The Applicant gave direct evidence before the Tribunal that he did not extort.

d. It was in evidence that the cleaners' salaries were too little to make a difference and would cost the Applicant, a 27-year employee with the UNHCR/RO, too much to jeopardize his career.

e. The Applicant's co-worker for a decade, Mr. Iskander gave evidence that the misconduct alleged did not happen. Mr. Abdelrahman, the Applicant's fellow employee for all 27 years, gave direct evidence before the Tribunal that the allegations were untrue and direct evidence was tendered that there was no aura of fear around the Applicant.

f. The Respondent presented innuendo, not the compelling evidence required to ground disciplinary sanction. The Administration brought charges that it should never have against the Applicant.

25. With respect to the charge of abuse of cleaners, the Applicant submitted:

a. That it is true that he was loud. A few witnesses gave evidence of a heated dispute with one cleaner which involm 8b that it shoulanersn t

insults, first by the cleaner and then the Applicant. Mr. Sabry Ahmed gave untrue evidence of insults about cleaners' mothers. These incidents were never reported and Ms. Hayam El-Guindy who was his superv

Tribunal, or obtained in the fact-finding interviews. The oath of the witnesses have not been recorded and their veracity cannot be tested. The Applicant submits that the message from the Appeals Tribunal in *Azzouni* is very clear, that is, if disciplinary charges are sustained upon either unsworn testimony or hearsay evidence, they will be reversed on appeal.

29. It was also submitted on behalf of the Applicant that the investigative and disciplinary processes were fundamentally unfair. In this respect the Applicant underscored:

- a. There was no presumption of innocence.
- b. There was evidence that management had spoken to the Applicant about his treatment of co-workers. He, however, was never formally disciplined. His behavior was not raised as a management concern.
- c. Management began privately assembling evidence against him. There was evidence tendered of difficult times in UNHCR management in 2006 by Ms. Hayam El Guindy and Ms. Stephanie Rinvile. There were some serious suggestions that the UNHCR had concerns about how allegations of prolonged misconduct would reflect on the office. There was a telling reference, in the context of investigating the complaint to “zero tolerance” policy by Ms. Stephanie Rinvile.
- d. A meeting was convened in January 2007 during which Ms. Rania El Guindy was mandated to undertake a formal initial fact-finding investigation. She had no formal responsibility for investigations. It was to be a brief investigation.
- e. The Applicant was not interviewed. The investigator was told by upper management that it was not necessary to interview him. It was not simply an investigation of the allegations reported to Ms. Hayam El Guindy in December 2006 but according to Ms. Rania El Guindy, the investigation “evolved”.
- f. The Respondent states that there were “four separate reports” of attempted extortion. The initial fact-finding investigator told each of the people interviewed that

the Applicant was under investigation and what the investigation was about. These people were then invited to provide their comments. There was no investigation into the second-hand accounts of those interviewed. The Tribunal has never been provided with the revised investigation report.

g. In the follow-up interview by Geneva of the Applicant over the telephone, he was not offered a lawyer. He was not told he was being investigated and excitedly ran to the telephone for his first call in 27 years from Geneva.

h. The final conclusions of the investigation are replete with reasoning errors.

30. In light of the foregoing, the Applicant requested the Tribunal to order:

- a. Reinstatement, effective 26 November 2007 and payment of accrued salary and interest.
- b. Moral damages in the sum of \$100,000.
- c. All adverse material to be removed from the Applicant's personnel files.
- d. IGO Geneva to be held accountable for its failure to make a good faith effort to investigate the allegations against the Applicant, pursuant to Article 10 (8) of the Statute of the Tribunal.

31. The Applicant testified that since his summary dismissal, his life is now impossible and that his children are out of school, he has been stigmatized, he has sold all his possessions, he lives of borrowing from people and that his daughter cannot get married because he has no money. The Applicant also requested the Tribunal to be allowed to make additional submissions on the quantification of a monetary remedy if deemed appropriate.

Respondent's Case

32. The thrust of the Respondent's case is that the summary dismissal was justified and proportionate to the offence.

33. It is the Respondent's case that the charges against the Applicant were well founded, supported by evidence and that there was no breach of the Applicant's due process rights.

34. On the standard of proof, the Respondent submitted that he is not required to prove his case beyond reasonable doubt. The former UN Administrative Tribunal had expressed the burden of proof in terms of adequate evidence or on the preponderance of the evidence in *Araim*⁷ and *Jhuthi*⁸ respectively. In *Cohen* the Dispute Tribunal held that for summary dismissal cases a higher standard of proof should apply although the standard of proof in summary dismissal cases remains somewhat below the beyond reasonable doubt standard required in criminal cases.

35. On the charge of harassment of the cleaners, Mr. Sabry Ahmed testified that he directly observed the Applicant calling the cleaners in an insulting way, insulting their religion and their parents as well as pushing a cleaner in the chest. Ms. Hayam El Guindy also testified that the Applicant regularly insulted the cleaners and that she had witnessed an incident whereby the Applicant had pushed a cleaner. She also testified that when she raised the matter with the Applicant, as she had on a number of occasions, he did not accept that his behaviour was wrong and that he viewed this as the only way the cleaners would work. Mr. Bakr provided evidence to the investigation (although he was not available for the hearing) that he had witnessed the Applicant pushing and insulting the cleaners.

36. Ms. Rania El Guindy testified to the Tribunal that she had witnessed a particular incident when the Applicant yelled at a cleaner and slapped him on the back of his neck. The cleaner did not react and Ms. Rania El Guindy was shocked. Ms. Rania El Guindy also referred to this incident when she conducted her interview with Mr. Sabry Ahmed. The Respondent submits that the preponderance of evidence supports the conclusion that Mr. Borhom did harass the cleaners at UNHCR/RO.

37. On the charge of extortion and attempted extortion, the Respondent submitted that Mr. Zaid had provided direct evidence at the investigation stage that the Applicant had attempted to extract a payment from him and that fearing he may try and interfere with his contract with the UNHCR/RO, he reported the matter to Ms. Hayam El Guindy. Ms. Hayam El Guindy corroborated Mr. Zaid's written statement that he had reported the matter to her.

38. Hearsay evidence was provided to the investigation by Ms. Hayam El Guindy and two security guards Mr. Bakr and Mr. Sabry Ahmed, that a practice existed whereby the Applicant would take a cut from the cleaners salary and that this happened when they received a bonus for work that fell outside their normal terms of reference and for which, therefore, they were paid directly by UNHCR and not through the contracting company. The hearsay evidence provided by Ms. Hayam El Guindy derived from conversations she had with the head of the afternoon shift, Mr. Ragab, one of the cleaners who was responsible for cleaning the car, Mr. Aly and the former Head of Security, Captain Ashraf.

39. It is the Respondent's case that hearsay evidence is admissible and that it is up to the Tribunal to determine its probative value, if any, and that in the present case, the preponderance of the hearsay evidence is striking. Ms. Hayam El Guindy received four separate reports relating to extortion or attempted extortion. In addition, Mr. Sabry Ahmed provided evidence that the head of the morning shift had told him and the other guards that he gave money to the Applicant and that this happened when the cleaners received a bonus of some kind. Mr. Bakr, in his witness statement, stated that he was aware of this practice and gave direct evidence of this to the former JDC. The head of the afternoon shift, Mr. Ragab testified that he himself was asked to give money to the head of the morning shift who was acting with the Applicant and that he was aware that the cleaners from the morning shift were forced to give money to Mr. Kader, the supervisor of the morning shift, on behalf of the Applicant.

40. In response to the Applicant's contention that Mr. Bakr was motivated by vengeance against him as he did not put the office seal on a paper which Mr. Bakr

required by way of an alibi, the Respondent submits that it is not clear why Mr. Bakr would have requested such a paper from the Applicant. Even if the Applicant's version of events is accepted and a motive for bias established, it does not account for the preponderance of other evidence regarding the Applicant's activity. Mr. Iskander corroborated the Applicant's version of events but the Respondent submits that the relationship between the Applicant and Mr. Iskander is closer than either party is willing to admit.

41. The Respondent submits that there is circumstantial evidence tendered to show that the Applicant together with Mr. Iskander advised Ms. Hayam El Guindy about which suppliers to use and that the cleaners were paid directly by UNHCR both by cheque to the morning and afternoon shift supervisors and from petty cash for special jobs, such as cleaning the office cars and moving the office furniture and that at the end of 2006/2007, the office move created many such jobs. The Respondent submitted that the preponderance of evidence, including first hand hearsay evidence, supports the conclusion that the Applicant did extort and attempt to extort money from UNHCR/RO contractors and that this alone constitutes serious misconduct justifying disciplinary measures.

42. With regard to the stealing and resale of toner cartridges, the Respondent concedes that there is insufficient evidence to maintain this charge.

43. It was the Respondent's submission that the Applicant's due process rights were respected and that he was given full opportunity to reply to the charges against him. The investigation was carried out in accordance with the provisions of the then applicable ST/AI/371 of 2 August 1991 (Revised Disciplinary Measures and Procedures) and UNHCR Inter-Office Memorandum, Field Office Memorandum 54 of 2005 (IOM/FOM/54/2005). The UNHCR IGO was not obliged to inform the Applicant of the complaint against him until after formal disciplinary charges were instituted. The Respondent submits that it was within the discretion of the IGO whether further witnesses needed to be interviewed or re-interviewed.

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of the Applicant and her own certainty and conviction of his guilt in physically abusing cleaners in the office even before she was tasked to investigate the allegations, was allowed to take the witness stand. In testifying to having witnessed on one occasion, the Applicant slap a cleaner on the neck as she stepped out of an elevator, she is unable to explain the context in which the slap was given and received without any reaction on the part of the cleaner. She, however, went on to tell the Tribunal that the habit of slapping and pushing each other around was a common habit among males in work places in Egypt.

48. The same investigator testified that she did not approach or interview some of the alleged victims of the Applicant's excesses because their supervisor told her they did not want to speak to her even though she saw them every day at work. The question arises as to the real reason why she did not seek to collect direct evidence but preferred double and triple hearsay evidence of others who had stories to tell. She had also failed to make any efforts at contacting witnesses who could provide direct, first-hand accounts of the Applicant's alleged extortion of contractors and other workmen. In the circumstances, the Tribunal can only arrive at the inescapable conclusion that the initial fact-finding exercise in this case is totally unreliable, fundamentally flawed and a complete sham.

49. As if these shortcomings of the initial fact-finding process were not enough, the report produced by the fact-finder was further revised by UNHCR/RO's senior managers before being sent off to Geneva. The Tribunal finds it somewhat odd that the drafter of the initial fact-finding report was not even aware of what the final draft of the report sent to the IGO looked like. This additionally raises serious doubts as to the independence of the initial fact-finding process.

50. As to the quality and relevance of the Preliminary Investigation Report dated 15 May 2007 and which was drafted by the IGO Investigation Unit in Geneva, the Tribunal makes the following observations:

51. Paragraph 5.12.2 of IOM/FOM/54/2005 requires that investigations must respect the individual rights and obligations of all staff as set out in the UN Staff Regulations and Rules and be conducted with strict regard for fairness, impartiality, the presumption of

innocence and due process. As stated in *Sanwidi*⁹, the sheer importance of the investigation process leading up to the disciplinary action against a staff member cannot be over-emphasized.

52. The IGO/Investigation Unit failed to interview any of the individual cleaners who were allegedly harassed and extorted by the Applicant. The reasons provided for the failure to interview the said cleaners were:

Unfortunately, the individual cleaners were not available for interview. They are day labourers of a UNHCR contractor, and there is no means to compel their cooperation. Moreover, given their position as unskilled labourers in a market with high unemployment, the risk of affecting their job and even personal security is considered significant. Together with the language difference and other logistical matters, these constraints made collecting statements from the alleged victims of Mr. Borhom's extortion impossible.

53. These reasons are disingenuous at best. The language difference is certainly not an issue in the present case since Arabic is one of the United Nation's six official languages. The Tribunal's view is further reinforced by the fact that ST/SGB/2005/21 (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations), which was applicable at all material times, was specifically promulgated to protect persons such as the Applicant's alleged victims. Section 8 of ST/SGB/2005/21 provides that

evidence from the alleged victims and a heavy reliance on second hand evidence made by third party witnesses.

55. Not only did the IGO/Investigation Unit fail to establish facts that could legally amount to misconduct or serious misconduct, the Unit carried out no investigations at all except to attempt to fleshen up the initial fact-finding report which had been revised by others and to make arm-chair analysis and deductions which they presented as an investigation report. It is not surprising to this Tribunal that after cooking up a report, its authors could not testify at the hearing in this case to defend it.

56. It has been stated time and again that the United Nations must be an exemplary employer which respects the rights of its employees. It is a standard-setting Organization for the world at large and cannot harbour those who would find short cuts where they ought to apply diligence especially where an employee's career and livelihood are in issue.

57. Even as the IGO investigators failed to establish the facts, they did not give the Applicant the benefit of the doubt. The following examples from the Preliminary Investigation Report are illustrative:

a. At paragraph 31, the IGO/Investigation Unit concluded that the items over which the Applicant had authority and was believed to be stealing were consumable products not subject to normal asset management procedures and that there was no effective way of distinguishing between normal consumption and loss that might be due to theft.

b. It is clear that on this score no evidence was tendered to show that the UNHCR/RO in Cairo had lost

the initial fact-finding investigation to be a violation of the Applicant's due process rights. The provisions of ST/AI/371 have not been complied with. The summary dismissal of the Applicant based on this fictitious report is patently illegal.

Charge of theft and taking toner cartridges from the office without authorization and selling these items for private gain

59. The IGO's Preliminary Investigation Report concluded that the Applicant's theft of UNHCR/RO property was established by "two credible witnesses" and that it was corroborated by circumstantial evidence such as the Applicant's access to UNHCR/RO property and his departure from the office carrying bags with which he did not enter. The Report also found that the relevant circumstantial evidence primarily related to proof of opportunity and that his responsantial 7/ma62 setunityiTidges

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United Nations Development Programme, the United Nations Population Fund, UNHCR, the United Nations Children's Fund, the United Nations Office for Project Services and the World Food Programme.

75. Paragraph 3.1 of ST/SGB/2005/20 requires that upon successful completion of the programme, a certificate of completion would be issued which should be retained by each staff member and a copy placed in his/her official status file. A copy should also be provided to the staff member's supervisor. Paragraph 3.2 of ST/SGB/2005/20 requires Heads of departments and offices to be responsible for ensuring the completion of the learning programme by themselves, their staff and others for whom they are responsible.

76. There was no evidence presented to the Tribunal to show that the Respondent had implemented this programme at the UNHCR/RO and that the Applicant had received the said mandatory learning programme. Paragraph 2.4 of ST/SGB/2005/20 provides that the learning programme would be issued initially in English, French and Spanish in November 2005. From December 2005, it would be made available in Arabic, Chinese and Russian.

77. The Tribunal observes that the Applicant's supervisor, Ms. Hayam El Guindy on one occasion witnessed the Applicant hit or push a cleaner. She did not consider it a serious matter that the Applicant called the cleaners names and did not reprimand him or take any further action. She never heard insults pertaining to religion or parents and as the Applicant's supervisor she would have taken the matter further if she did. The Tribunal also notes that none of the cleaners had ever reported that they had been mistreated by the Applicant.

78. At the material time, there was no administrative issuance which defined "workplace harassment". Workplace harassment consists of offensive treatment through vindictive, cruel, malicious or humiliating attempts to undermine an individual employee or groups of employees. In the present case, the Tribunal adopts the following test in determining whether the Applicant's conduct amounted to workplace harassment¹⁰:

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- a. Was the harassment intentional?
- b. Did the Applicant know or ought to have known that he was harassing the cleaners and would a reasonable person in possession of such information at the time of the alleged conduct regard it as harassment?
- c. Were the alleged victims alarmed or distressed?
- d. Was there a course of conduct which involved harassment on at least two occasions?
- e. Was the same person the victim on each occasion?

79. Having looked at the evidence presented in this case, the Tribunal finds that: the trading of insults between the Applicant and the cleaners was mutual; the nature of the alleged “physical abuse”, as testified by several witnesses, was common and normal in workplaces in Egypt; and the alleged victim(s)’ work was not affected in any way.

80. The Tribunal notes that ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority), which although not in effect at the material times, provides guidance as to how the Respondent should have dealt with the allegations of harassment.

81. Paragraph 5.3 of ST/SGB/2008/5 now requires managers and supervisors to take prompt and concrete action in response to reports and allegations of prohibited conduct. Failure to take action may be considered a breach of duty and result in administrative action and/or the institution of disciplinary proceedings. Paragraph 5.5 of ST/SGB/2008/5 states that,

In many cases, the situation can be resolved informally. An informal approach offers the opportunity to resolve a complaint or grievance in a non-threatening and non-contentious manner. Aggrieved individuals are encouraged to notify the offender of their complaint or grievance and ask him or her to stop as, in some instances, the alleged offender may not be aware that his or her behaviour is offensive. However, disparity in power or status or other considerations may make direct confrontation difficult, and aggrieved individuals are not required to confront the offender.

82. In respect to the foregoing, the Tribunal heard evidence that the Applicant's behaviour was considered normal in Egyptian workplace culture. In addition the fact that there was no evidence tendered by the Respondent to show that the Applicant had received the mandatory training on what the Organization considered workplace harassment, the lack of direct testimonial evidence from the alleged victims, the lack of specific dates of the alleged harassment and having applied the above-mentioned test to the facts in the present case, the Tribunal concludes that the charge of harassment or abuse of cleaners cannot be sustained.

Charges of extortion and attempted extortion

In the context of administrative law, the principle of proportionality means that an administrative action should not be more excessive than is necessary for obtaining the desired result. The requirement of proportionality is satisfied if a course of action is reasonable, but not if the course of action is excessive. This involves considering whether the objective of the administrative action is sufficiently important, the action is rationally connected to the objective, and the action goes beyond what is necessary to achieve the objective. This entails examining the balance struck by the decision-maker between competing considerations and priorities in deciding what action to take.

93. In the present case, it is the finding of the Tribunal that the summary dismissal was far more excessive than was necessary for obtaining the desired result. The Applicant, a loyal and dedicated employee with the Organization for over 26 years should have received the mandatory training on the expected workplace culture for an international civil servant which the Respondent failed to provide. The decision to summarily dismiss the Applicant went beyond what was required to achieve the objective of creating a culturally diverse and harmonious workplace free of harassment and abuse of authority as spelt out in ST/SGB/2005/20.

Findings/Conclusions

94. The summary of the Tribunal's findings and conclusions are as follows:
- a. The initial fact-finding investigation was fundamentally flawed, unreliable and a sham.
 - b. The failure to conduct a proper investigation but to resort to arm-chair analysis and conclusions based on the unreliable initial fact-finding investigation was not only useless but constituted a violation of the provisions of ST/AI/371 and the Applicant's due process rights.
 - c. The Preliminary Investigation Report is characterized by a lack of direct

- d. Counsel for the Respondent conceded that there was insufficient evidence to maintain the charge of theft and taking toner cartridges from the Office without authorization and selling these items for private gain.
- e. UNHCR failed to provide the Applicant with the mandatory learning programme on prevention of workplace harassment and the Respondent cannot sustain the charge of harassment of cleaners.
- f. The evidence adduced by the Respondent does not sufficiently support the charges of extortion and attempted extortion.
- g. The Respondent has failed to discharge his burden of proving that misconduct has taken place.
- h. The decision to summarily dismiss the Applicant went beyond what was required to achieve the objective of creating a culturally diverse and harmonious workplace free of harassment and abuse of authority as spelt out in ST/SGB/2005/20.

Remedy

95. The sanction of summary dismissal was based on unsubstantiated charges. Accordingly, the Tribunal:

- a. Rescinds the Applicant's summary dismissal and considers that until the date of this judgment the Applicant remains lawfully in the service of the UNHCR.

rescission of the Applicant's dismissal. The Tribunal considers an appropriate compensation to be the amount of two years' net base salary of the Applicant.

d. Irrespective of whether the Respondent elects to reinstate the Applicant or to pay him the above amount as an alternative, the Applicant also deserves compensation under article 10.5 (b) of the UNDT statute for the moral damage the wrongful decision has caused him. In view of the stigma of being imposed the most severe disciplinary measure and the resulting difficulties in finding further employment, the Tribunal sets the appropriate amount at six months of the Applicant's net base salary.

e. The Tribunal awards the Applicant six months' net base salary for the violation of his due process rights.

f. The Applicant also requested that his personnel file be cleared of any adverse material relating to this matter. The Tribunal orders that all material relating to the Applicant's dismissal be removed from his official status file, with the exception of this judgment and any subsequent action taken by the Administration to implement it.

(Signed)

Judge Nkemdilim Izuako

Dated this 8th day of April 2011

Entered in the Register on this 8th day of April 2011

(Signed)

Jean-Pelé Fomété, Registrar, UNDT, Nairobi