



Before: Judge Goolam Meeran

Registry: New York

Registrar: Hafida Lahiouel

KOUKA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:

Bart Willemsen, OSLA

Counsel for respondent:

Susan Maddox, ALU

Notice: The format of this judgment has been modified for publication purposes in accordance with Article 26 of the Rules of Procedure of the United Nations Dispute Tribunal.

Case No.

not be struck out on the ground that it has no reasonable prospect of success. He was invited to send comments, representations or arguments, together with relevant documents on or before 12 August 2009. It was made clear to him that if he failed to comply with the requirements of the Order, it may result in his application for a review of the decision to dismiss him being struck out without further Order. To date, the applicant has not responded.

8. Given the possibility that the applicant may have difftCID 2iomppreview of tlanguage

- 10.1 whether the facts resulting in summary dismissal had been established (that is whether the findings made are reasonably justifiable and are supported by the evidence),
- 10.2 whether the established facts legally amount to misconduct or serious misconduct,
- 10.3 whether there has been a failure to consider significant facts or whether relevant facts have been considered,
- 10.4 whether there has been any significant procedural irregularity,
- 10.5 whether there has been any improper motive or abuse of process,
- 10.6 whether the disciplinary measure is legal,
- 10.7 whether the disciplinary measure is proportionate to the misconduct, and
- 10.8 whether the administration has acted in an arbitrary manner.

Conclusion

11. In my assessment, the investigation by the SIU produced clear evidence establishing the facts supporting a charge of serious misconduct. The findings were amply justified on the evidence including the applicant's admissions. The misconduct in question was serious. I find that there has been no procedural irregularity, no improper motive or abuse of process and the sanction of immediate separation from service without any pay in lieu of notice or termination indemnity was fully justified in the particular circumstances. Furthermore, if the applicant was really serious about pursuing his appeal against dismissal, it was incumbent upon him to respond to the Order made on 8 July 2009. He has not done so. I am satisfied that the notice was properly served and further satisfied that there does not appear on the evidence to be an arguable case against the finding of serious misconduct. The decision that he be separated from service with immediate effect was fair and a proportionate response to

the misconduct which he had admitted amply supported by the evidence. For all these reasons, I consider that the application made by the applicant be struck out in its entirety.

(Signed

Judge Goolam Meeran

Dated this 18th day of August 2009

Entered in the Register on this 18th day of August 2009

(Signed

Hafida Lahiouel, Registrar, New York