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22. The Applicant's email was forwarded to the Chair of the Independent

26. On 15 October 2009, the Director of the Legal Support Office asked Counsel for the Applicant which conditions had not been met.

27. In an email sent on 16 October 2009 to the Applicant, his doctor informed him that he opposed the Applicant's participation in the interview for strictly

d. The Applicant’s actions cannot be categorized as misconduct, as defined by the former United Nations Administrative Tribunal. His actions were prompted by concerns over the possible effects of the proceedings on his health. His illness is not disputed by the Respondent. Each and every proposal made by the Applicant was initially rejected by the Independent Panel on Accountability and, despite some concessions, there was never any agreement that respected his health limitations. On the contrary, the Independent Panel on Accountability decided to impose its own conditions. Furthermore, the opinion of the Director of the United Nations

Medical Service, ISYH/OL 23, October 2009 was MBHYL rçYMYv,“pLnrçMv“wMHHYLnrçMv“w

Applicant's case, as he was not the subject of a disciplinary process related to the attack of 11 December 2007;

c. The Independent Panel on Accountability did not disregard the Applicant's right to due process. The fact that the Chair of the Independent Panel on Accountability recommended in his letter of 18 November 2009 that the Applicant should be charged with misconduct based on the findings and recommendations of the September 2008 report does not mean that the Panel had already reached a decision as to the Applicant's guilt as of September 2008. Furthermore, the Applicant had no right to be assisted by counsel during the interview. According to the internal practice of the Organization, stemming from Rule 10.3(a) of the Staff Rules, such a right does not apply at the administrative investigation stage, but only when the disciplinary process is initiated. In addition, the Independent Panel on Accountability sent the Applicant a copy of its terms of reference on 1 August 2008. Those terms of reference clearly explained the Panel's mandate and the type of evidence the Applicant was expected to provide, and the Applicant never requested any further clarifications;

d. The Applicant's medical condition did not prevent him from attending the interview with the Independent Panel on Accountability. The Administration fully accepted the diagnosis made by the Applicant's doctor; there was therefore no need to seek a second specialist opinion or to constitute a medical board. The Administration also fulfilled all the conditions set by the Applicant's doctor, who had initially asked that the Applicant be accompanied by a "person of confidence", which the Independent Panel on Accountability accepted. However, that condition was subsequently modified and the email of 16 October 2009 was only brought to the attention of the Administration in March 2010, during the investigation conducted by the Office of Audit and Investigations. The Director of the Medical Service concluded that the new, legal conditions set out by counsel for the Applicant on 21 October 2009 had no medical relevance. The Applicant was therefore obliged to follow the request of the Independent Panel on Accountability, as there was no indication that he

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transmitted to them, the Administration was in possession of that document when the disciplinary measure was imposed on 19 December 2011. The 16 October 2009 email gave the Applicant a medical excuse for not answering the invitation.

55. When a staff member presents the Administration with a medical certificate from his or her doctor justifying an absence or the inability of the staff member to meet any professional obligation, and if the Administration doubts the validity of the medical certificate provided, the Administration has the responsibility to have the health of the staff member examined by its own medical service or, if disputed, by a medical board. Failing this, the medical certificate presented by the staff member is supposed to reflect his or her actual health status.

56. In the instant case and to the extent that the legality of a decision is determined as at the date on which it is taken, when the UNDP Administrator imposed the disciplinary measure on the Applicant on 19 December 2011, the Administrator could not have been unaware that the Applicant had presented a medical certificate—the validity of which was never disputed by the Administration—to justify his absence. While the Applicant could be criticized for not forwarding the 16 October 2009 certificate to the Administration upon receiving it, in order to notify the Independent Panel on Accountability ahead of time that he would not be attending the interview scheduled for 26 and 27 October 2009, that oversight, as regrettable as it may be, was not the reason for the disciplinary measure.

57. Thus, the Tribunal finds that the disciplinary measure was based on inaccurate facts and should be rescinded.

Compensation

58. The Applicant is seeking compensation for moral damage resulting from the unjustly imposed disciplinary measure.

59. While the Respondent contends that the Applicant's claim for compensation for the damage suffered should be rejected because he failed to request a management evaluation of the decision to invite him to attend an

interview, this receivability challenge must be rejected by the Tribunal since, in the present case, the Tribunal is only ruling on the legality of the disciplinary measure imposed and on the harm it caused the Applicant. Besides, in disciplinary matters, the staff member is not required to request a management evaluation before filing an application with the Tribunal for rescission of the disciplinary measure imposed and compensation for the resulting damage.

60. The Tribunal finds that the moral damage suffered by the Applicant as a result of the disciplinary measure is substantial. Indeed, the disciplinary measure was imposed on the staff member on 19 December 2011, the day before the decision to terminate his contract for health reasons came into effect. That unlawful disciplinary measure inevitably exacerbated his nervous breakdown.

61. In the circumstances of the present case, the Tribunal finds that ordering the Respondent to pay the Applicant compensation in the amount of USD8,000 represents a fair assessment of the damage.

Conclusion

62. In view of the foregoing, the Tribunal DECIDES:

- a. The disciplinary measure of demotion with deferment of his eligibility for consideration for promotion for a period of one year is rescinded;
- b. The Respondent is ordered to pay the Applicant compensation in the amount of USD8,000;
- c. The above-mentioned compensation shall be paid to the Applicant within the period of one month from the date of the judgment.

Entered in the Register on this 12th day of June 2012

(Signed)

René M. Vargas M., Registry, Geneva