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outcome of the on-going investigation, he would not be terminated but placed on "special leave with full pay". Once the results of the investigation were known, his situation would be reviewed and a contract completion date would be set.

18. On 12 April 2006, the investigation panel submitted its report. The events it examined mostly date from the second half of 2003. The panel found that, while the applicant acted unwisely towards the complainant given the supervisor-subordinate relationship that existed between them, there was insufficient evidence to show that his doing so resulted in harassment of any kind, including sexual, and that there was, on the contrary, evidence of a mutual amicable relationship between the two men during 2003 and 2004. The panel did, however, add in its conclusions (see paragraph 51 of the report):

That, should [the applicant] continue to be employed by the United Nations, he should be cautioned as to the responsibilities of a senior manager in either having, or seeking to have, other than a working relationship with subordinates in his line management structure.

19. On 25 April 2006, the applicant wrote to the Secretary-General to request administrative review of "several decisions", namely the decisions to:

- a. terminate his contract;
- b. change his office in an undignified manner during the month of April;
- c. not to deal with the complaint for sexual harassment locally, not to inform him of it and not to assess its credibility before deciding on an investigation and informing New York.

20. By letter dated 27 April 2006, the Assistant Secretary-General for Human Resources transmitted a copy of the investigation panel's report, without its annexes, to the applicant. She informed the applicant that in the light of the panel's findings, which she accepted, she had decided not to

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confirmed on 12 June 2006 to terminate his appointment, and the decision contained in the investigation panel's report of 12 April 2007 and the letter of 27 April 2006 to caution him for his behaviour as a result of the complaint for sexual harassment made against him.

26. By letter dated 14 July 2006, the Chief Administrative Officer, ICTY, informed the applicant that the Medical Service had certified his sick leave until 31 July 2006 and that, pursuant to administrative instruction ST/AI/2005/3, the termination of his appointment would therefore be effective on that date.

27. Also on 14 July 2006, the applicant informed the Chief Administrative Officer by email that he would submit a further medical certificate by the end of July. A document from the ICTY Medical Service dated 14 July 2006 also noted that a further medical report would be provided by the end of July.

28. On 18 July 2006, the applicant petitioned JAB for suspension of action on the decision of 12 June 2006. On 27 July 2006, JAB submitted its report, recommending that the applicant's request be rejected. On 28 July 2006, the Under-Secretary-General for Management accepted that recommendation.

29. By email dated 27 July 2006, the applicant informed ICTY that his sick leave would be extended for two months until 26 September 2006 and that he was on the point of submitting a medical report from his doctor, who had just returned from holiday. On the same date, the ICTY Medical Service responded that it would need a detailed medical report to be able to certify extension of the sick leave. The applicant replied that he was doing all he could to obtain that report, but that it would take a further one to four weeks.

30. On 31 July 2006, the Organization terminated the applicant's appointment.

31. On 28 August 2006, the applicant submitted a medical report. The ICTY Medical Service informed him that it could only certify his sick leave until his last working day, 31 July 2006.

32. On 26 October 2007, JAB submitted its report to the Secretary-General. In it, it concluded on the one hand that the decision to terminate the applicant's appointment upon the death of the senior Serbian official he was responsible for prosecuting and the decision to caution him regarding his behaviour towards a subordinate were proper exercises of the respondent's discretion, but on the other that the decision not to extend the applicant's contract during his sick leave was a serious violation of his rights, for which JAB recommended the payment of 15 months' net base salary.

33. By letter dated 17 December 2007 and forwarded to the applicant on 21 January 2008, the Deputy Secretary-General advised the applicant of the Secretary-General's decision to accept the JAB recommendation in part only and to award him compensation in the amount of eight months' net base salary.

34. On 2 July 2008, after having requested and obtained from UNAT two



39. On 5 May 2010, the respondent informed the Tribunal that he had mistakenly sent a copy of the above email to the applicant's counsel. He requested the Tribunal to order counsel for the applicant to destroy the said annexes and to refrain from disclosing their contents to anybody, including the applicant.

40. By Order No. 55 (GVA/2010) dated 6 May 2010, the Tribunal, considering that the annexes contained confidential information of such nature that their distribution should be strictly restricted, ordered the applicant and his counsel not to disclose the contents of the annexes to anybody and not to use them before the Tribunal without its specific permission.

41. By letter dated 26 May 2010, the Tribunal informed the parties that

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- b. The decision to terminate his appointment was in reality influenced by improper considerations, namely his supervisor's animosity towards him, which arose out of disagreement over the prosecution of the above-mentioned senior Serbian official and was demonstrated by a series of incidents;
- c. His due process rights were, as JAB recognized, violated by the

postponed the interview even though he had agreed t

- c. The contested decisions were not vitiated by bias or any improper motive. It is established case law that it is for an applicant to prove his allegations of bias, which the applicant does not do;
- d. The Secretary-General agreed that the applicant's request for an additional two months' sick leave and the consequent extension of his contract should have been considered even after his separation and repatriation. He therefore awarded the applicant compensation of eight months' salary as being proportionate to the injury suffered and consistent with the practice of UNAT in similar circumstances;
- e. UNAT does not, other than in exceptional circumstances, award applicants costs even if it sustains their claims. The applicant fails to demonstrate that he unavoidably incurred costs for his defence;
- f. The Secretary-General's decisions regarding requests for suspension of action are not appealable;
- g. Decisions that have not been the subject of a request for administrative review cannot be contested before the Tribunal. That applies to the absence of appraisals of the applicant's performance.

### Judgment

46. The application is irreceivable in so far as it seeks to contest the absence of appraisals of the applicant's performance because there was no relevant request to the Secretary-General for administrative review.

47. While the applicant contends that he was deprived of due process during the consideration by JAB of his request for suspension of action, the Tribunal considers that, given the limited effect of a stay of execution and the time constraints inherent in suspension-of-action proceedings, those proceedings were conducted consistently with the applicable rules and the applicant's rights.

48.

Tribunal to investigate whether his supervisor's alleged animosity towards him was real and whether it influenced the decision.

54. The applicant further claims that his termination was unlawful because the Administration had an obligation to extend his contract for the duration of his sick leave. The Tribunal indeed notes, on the one hand, that administrative instruction ST/AI/2005/3 concerning sick leave creates such an obligation and, on the other, that prior to his termination on 31 July 2006 the applicant had provided the Administration with information that was sufficiently detailed to justify suspension of the contested decision. Furthermore, the Secretary-General himself acknowledged the unlawfulness of the decision to terminate the applicant's appointment effective 31 July

leave credit that he had on 31 July 2006. It must be said, however, that this

applicant was given was a reprimand within the meaning of the then staff rule 110.3(b)(i).

64. Pursuant to the above-mentioned rule and to administrative instruction ST/AI/371, a reprimand is a non-disciplinary measure not requiring prior referral to a disciplinary body. It was within the Secretary-General's discretionary power to give the applicant a reprimand at the



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Case No. UNDT/GVA/2010/021

(UNAT 1608)

Judgment No. UNDT/2010/130/Corr.1



78.



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(UNAT 1608)

Judgment No. UNDT/2010/130/Corr.1

Entered in the Register on this 27th day of July 2010

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(signed)

Víctor Rodríguez, Registrar, UNDT, Geneva