

Case No.:

UNITED NATIONS DISPUTE TRIBUNAL

## Introduction

1. On 21 February 2011 the Applicant filed an Application with the United Nations Dispute Tribunal (UNDT) challenging the decision of the Secretary-General to separate him from service with compensation in lieu of notice in accordance with staff rule 10.2.

## Facts

2. The Applicant joined the International Operations Manager, Mali Country Office, on 1 April 2005. At the time of his appointment, the Country Representative was Mr. Mamadou Diallo. In April 2009 Mr. Diallo resigned and in 2010 he took up a position with the United Nations Development Programme (UNDP) and a new Country Representative, Mr. Makane Kane, took up office.

3. From 2-8 March 2010, the International Operations Manager, Africa Regional Office, Mr. Hicham Nahro, conducted a mission to the UNFPA Mali Country Office to assess business practices there.

Suspicion of fraud

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A concern was raised as it pertains to [a Long Term Agreement] signed with SAHEL TRANSIT, first [the Applicant] has indicated that the [Country Representative]





12. When asked why a Long Term Agreement had been made with Sahel Transit, the Applicant stated that the ultimate authority in the office was the Representative. When asked about the safeguards in place in relation to contracts of over 30,000 USD, the



- b. Whether the established facts legally amount to misconduct under the Regulations and Rules of the United Nations;
- c. Whether the disciplinary measure applied is proportionate to the offence;  
and





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evidence of the creation of these documents. It did, however, show that the invitation to bid letters were created, as the Applicant says, on 15 December 2005.

26. The investigators told the Tribunal that they had been unsuccessful in tracing any evidence of the existence of the three companies, Matti-Sarl, National Transit Bamako, and T.P.S. Transit. The addresses given on the documents proved to be vague or non-existent areas, and a visit to the Tribunal de Commerce in Mali

examination, Mr. Lucas admitted that he was convinced that the Applicant had committed a fraud. He also admitted that he had used the allegedly forged documents during a presentation in 2010 as examples of procurement fraud, in Australia. Though there is no evidence that the name of the Applicant was revealed at the seminar, the question remains whether it is advisable, ethical or proper to use materials that are subject to an investigation, for the purposes of a seminar or conference that is called to discuss procurement fraud.

31. Thirdly, the investigators and the Administration appear to have overlooked the fact that there were two rounds of bidding in which the relevant companies were involved ± one in 2005 and one in 2009. The Applicant supplied three sets of bids to Mr. Nahro in March 2010 and a further three in October 2010 when he responded to the Report. These last three documents he had found amongst his personal records<sup>2</sup> the existence of which he had mentioned to the investigators earlier. Put together, the six bids (two each from Matti-SARL, T.P.S. Transit, and National Transit Bamako) include three dated December 2005 (but not the subject, apparently, of the charge), two undated, and one dated 2009. Logically, it would seem that the Applicant presented the 2009 bids in error to Mr. Nahro, believing them to be the 2005 bids. The Applicant said as much in his testimony to this Tribunal. It is too clumsy to be false.

32. Bearing in mind the standard of proof in disciplinary matters the Tribunal is not convinced that the documents alleged to be fake or forged are so. At the hearing the only evidence presented in an attempt to establish that the documents were fake or forged was the mere allegation of red flags without more. This in itself does not indicate that it is highly probable that the documents were actually fake or forged, though they may appear  
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 as such. The established rule in matters of standard of proof.



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followed the established procedure relative to procurement and bids? Whilst a junior employee is entitled to follow or listen to the advice or instructions of a supervisor, he or she cannot be blind, more particularly, in such serious matters as procurement. Mr. Diallo may well have had his own reasons or agenda for the advice he gave to the Applicant and the latter may well have followed that advice in good faith. But given the nature of the functions he was occupying he took a big risk. It was his duty to comply with the rule personally, the advice of Mr. Diallo notwithstanding.

#### The conduct and responsibility of Mr. Diallo

43. Whilst he is not the subject of the present application, the Tribunal cannot help but remark upon the extraordinary unfairness in the prosecution of disciplinary proceedings against the Applicant, the Operations Manager, whilst the supervisor, the Country Representative, Mr. Diallo, appears to have escaped all inquiry, let alone sanction.

44. It was pointed out by Mr. Lucas in his testimony that there was no evidence of any personal gain to the Applicant in the granting of the contracts to Sahel Transit. It seems to this Tribunal that there is cause for suspicion that there may have been some gain on the part of Mr. Diallo. No investigation has been carried out into Mr. Diallo's conduct; he has not been.

## **Conclusion**

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