Introduction

1. On 12 August 2011, the Applicant submitted an application for interpretation, pursuant to art. 30 of the Rules of Procedure of the Dispute Tribunal, of the meaning and scope of the final judgment, *Johnson* UNDT/2011/124, issued by Judge Kaman on 30 June 2011. Such applications are normally dealt with by the judge concerned. That is not possible in this case because Judge Kaman issued the judgment on the last day of her tenure with the Dispute Tribunal.

2. It is not necessary to record in detail the factual findings that are fully set out in UNDT/2011/124, which concerned the second of two interrelated cases brought by the Applicant.

The first case

3. In the first case, Case No. UNDT/NY/2010/056/UNAT/1569, the Applicant appealed against the decision of the Secretary-General to place him on Special Leave With Full Pay ("SLWFP"). In the judgment in that case, *Johnson* UNDT/2011/123, the Tribunal made the following overall findings:

> a. The Organization did not properly exercise its discretionary authority by placing the Applicant on SLWFP pursuant to former staff rule 105.2(a)(i) effective 16 January 2006;
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> b. The Applicant's due process rights were not observed when the Secretary-General exercised his discretionary authority to place the Applicant on SLWFP pursuant to former staff rule 105.2(a)(i) effective 16 January 2006; and

c. The Applicant's due process rights were violated during the OIOS/PTF interrogations of the Applicant subsequent to his being put on SLWFP.

The second case

4. The current application arises from the second case, Case No. UNDT/NY/2009/116, which is closely connected to the events in the first case. Accordingly, a full appreciation of the background to the Applicant's request for interpretation and relief is best obtained by a reading of the judgments in both cases together, namely UNDT/2011/123 and UNDT/2011/124.

5. In the second case, the Applicant appe

reprimand, was issued on 29 July 2009 and is referred to as the "Reinstated Reprimand".

9. Judge Kaman's clear factual finding at para. 63 of UND/2011/124 is that the Initial Reprimand was improperly issued in that:

> … The established facts in this case demonstrate that the provisions of ST/AI/292 and the doctrine of *audi alteram partem* [the right of the other party to be heard] were not observed, and that the Initial Reprimand was improperly issued:
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> a. The decision to issue the Initial Reprimand was taken by the Respondent and approved by the then Deputy Secretary-General in November 2006, without the existence of these decisions being known to the Applicant;
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> b. When the Applicant in December 2006 filed his comments to the 2006 Report, those comments did not constitute a response to the Initial Reprimand (whose existence was unknown and which had not yet been issued);
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> c. The Applicant's comments to the 2006 Report were meaningless, since the decision to issue the Initial Reprimand had already been taken and approved as of November 2006;
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> d. The Initial Reprimand was issued on 16 January 2007 and was withdrawn only three days later, on 19 January 2007, before the Applicant had an opportunity to file any comments to it.

10. In light of these findings, in para. 65 of UND/2011/124, Judge Kaman found that the Applicant was not accorded "proper due process guarantees under ST/AI/292 and the internationally-recognised and fundamental legal principle of *audi alteram partem*, since he was not afforded an opportunity to see and to comment on the Initial Reprimand before it was issued".

11. The question relating to the Reinstated Reprimand was clearly and unequivocally addressed in paras. 66 and 67 of UND/2011/124. Given the clear factual findings made by Judge Kaman, it is difficult to understand the basis upon which the Respondent is contesting the Applicant's properly formulated request for

interpretation of the meaning and scope of the final judgment. Judge Kaman concludes in para. 73 that:

> … the Respondent did not properly observe the Applicant's due process rights when issuing the Reinstated Reprimand, since the Respondent failed to comply with the relevant provisions of ST/AI/292 and ST/AI/371, as well as the fundamental principle of good faith and fair dealing.

12. Paragraphs 74–84 of UNDT/2011/124 deal solely with the question of compensatory relief. The Respondent was ordered to pay to the Applicant the sum of 4 months' net base salary in effect as of January 2006. Paragraph 80 clearly states that the compensation being awarded was for pecuniary and economic loss as well as for moral injury. It is silent on the question whether the Applicant's request that the Reinstated Reprimand be rescinded and expunged from his official status file be granted.

13. Prior to the judgment being delivered in UNDT/2011/124, the Applicant was ordered to clarify the relief that he was seeking. His response of 27 April 2011 stated as follows in relation to the Reinstated Reprimand:

> … That Respondent should rescind the written reprimand that was reinstated on 29 July 2009 and that the written reprimand and all references to it and to the reprimand that was issued to Applicant on 16 January 2007 by Respondent and later withdrawn, together with all reference to the institution and dismissal of disciplinary misconduct charges as against Applicant, should be expunged from Applicant's official status file.

14. It is the Respondent's case that in granting the Applicant 4 months' net base salary as compensation and in making no comment on his request that the relevant records should be removed from his official status file, the Tribunal had in fact refused his request. In other words, making no decision on this aspect is tantamount to refusing it.

15. This submission is fanciful and wholly misconceived. The two Judgments (UNDT/2011/123 and UNDT/2011/124) read together leave the reader with no doubt that the Tribunal found that the Respondent did not properly observe the Applicant's due process rights when the Reinstated Reprimand was issued. Even if Judge Kaman did not, in explicit terms, order the removal of any unlawful reprimand and all references to it from the Applicant's official status file, it is clear that the logical conclusion from the clear factual findings in the Judgments is that such an unlawfully administered reprimand should have no place on his official status file. The Respondent's contention that the Applicant is now seeking, by this application, the same remedy that he was denied by the Tribunal in UNDT/2011/124 defies all logic in light of Judge Kaman's clear factual findings. The only conclusion I can sensibly draw from the fact that the judgment does not say so in explicit terms is that either Judge Kaman considered it implicit in the findings or alternatively she overlooked it in her final conclusions on remedies. To the extent that it may have been an oversight, on the basis of a full examination of the record and the judgments, I order the relief requested by the Applicant on the ground that it is what Her Honour had intended.

Conclusion

16. The Respondent is ordered to rescind both the Initial and the Reinstated Reprimand. It is further ordered that all references to the institution and dismissal of the disciplinary charges relating to misconduct should be expunged from the Applicant's official status file.

Observation

17.