



UNITED NATIONS DISPUTE TRIBUNAL

Date:

23 August 2011

Original:

English

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**Before:**

Judge Nkemdilim Izuako



Case No. UNDT/NBI/2011/044

Judgment No.: UNDT/2011/149

7. The Applicant argued that: the decision requiring him to undergo language proficiency tests in order to have his contract extended is an unlawful abuse of authority and is part and parcel of a wider pattern of harassment; the circumstances surrounding the events leading up to the decision that the Applicant undergo language proficiency tests as a condition for the extension of his contract demonstrate that this decision had been taken in bad faith; it amounted to an abuse of authority on the part of the SRSG; and is in breach of ST/AI/2010/5 (Performance Management and Development System).

### **Facts**

8. On 28 July 2011, the Applicant requested leave for the period 15 August to 9 September 2011 in order to visit his family. According to his leave approval form (annexed to the present Application), his leave request was approved by Alexander Ivanko, his supervisor, on 9 August 2011. The Applicant consequently bought flight tickets to Italy at a cost of Eu

### **The Applicant's Case**

12. The Applicant's case is summarized below:





and the date was already here at the time of the hearing. The Tribunal need not belabor itself on this point as the element of urgency had been overtaken by events. The Tribunal finds that the urgency element is not met.

### Irreparable damage

27. Having considered the Parties' submissions on this point, the Tribunal finds that although some harm is caused to the Applicant in dashing his and his family's expectations of a reunion during his leave, the said harm suffered by the Applicant must be examined in the light of the Applicant's duties to the Mission and the wider public interest of the Organization. The Applicant can be adequately compensated by monetary damages.

28. It is to be expected that compensation for the financial losses incurred by the Applicant will be settled swiftly and will not be allowed to become the basis for another cause of action.

### Conclusion

29. The Applicant's request for suspension of action of the decision to cancel his leave is rejected.

(Signed)

Judge Nkemdilim Izuako  
Dated this 25<sup>th</sup> day of August 2011

Entered in the Register on this 25<sup>th</sup> day of August 2011

(Signed)

Jean-Pelé Fomété, Registrar, UNDT, Nairobi