



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

A large, faded version of the United Nations logo serves as a background for the central text.

Parker
(Appellant)
v.
Secretary-General of the United Nations
(Respondent)
JUDGMENT
[No. 2010-UNAT-002]

Before:	Judge Inés Weinberg de Roca, Presiding Judge Kamaljit Singh Garewal Judge Rose Boyko
Case No.:	2009-003
Date:	30 March 2010
Registrar:	Weicheng Lin

Counsel for Appellant: Nicole Lewis
Counsel for Respondent: Jessica M. Elbaz

JUDGE INÉS WEINBERG DE ROCA, Presiding Judge.

Synopsis

1. Article 10(5)(a) of the Statute of the United Nations Dispute Tribunal (UNDT) applies to decisions in regards to appointments, promotions, or terminations, but not to staff in between assignments (SIBA), such as in the present case.

Facts and Procedure

2. The Appellant, Vincent Parker (Parker), is currently employed on an Indefinite Appointment at the United Nations High Commissioner for Refugees (UNHCR). In January 2007, he was placed on SIBA.

3. Effective 1 October 2007, he was appointed Senior Desk Officer (SDO), Iraq Support Unit, Middle East and North Africa Desk (MENA).

4. Following an incident with his supervisor, on 8 October 2007, he fell ill and was placed on sick leave by his doctor for an indefinite period of time. On 2 November 2007, the same doctor certified that Parker was able to work half-time for an indefinite period of time. Following a consultation with the Director, Medical Service, UNHCR, on 5 November 2007, it was determined that the position that Parker held in the Iraq Support Unit put him under too much psychological pressure, that his appointment to such post be rescinded, and that he be placed on a less stressful post. On 7 November 2007, Parker was informed of the decision to rescind his appointment, based on the advice of the Director of the Medical Service. Parker has not been appointed to any post since then.

5. On 28 July 2008, Parker filed an appeal with the former Joint Appeals Board in Geneva, seeking *inter alia* the rescission of the impugned decision, a written apology, and the monetary compensation of five-year salary for his suffering as a result of alleged harassment underlying the contested decision.

6. In a judgment dated 27 August 2009, the UNDT found that the procedure followed by the UNHCR in rescinding Parker's appointment was flawed, as Parker had not been informed of the aim of his convocation either prior to or during the medical examination, nor had he been afforded an opportunity to prepare for the examination, or to contest the medical opinion before the impugned decision was taken. Thus, it found that the decision of 7 November 2007 was illegal and decided that it be rescinded. At the

same time, in accordance with article 10(5) of its Statute, the UNDT provided UNHCR with the option to pay Parker a lump sum of two months' net base salary instead of rescinding the decision. In addition, the UNDT ordered that Parker be compensated for moral damage suffered as a result of the above-mentioned unlawful decision in the amount of three months' net base salary. Finally, before pronouncing a decision on Parker's request for damage suffered as a result of alleged harassment, the UNDT ordered UNHCR to submit additional observations "concerning the facts recounted as well as the damage alleged".

7. The above judgment was sent to the parties on 27 August 2009.

8. In an email dated 13 October 2009, Parker filed with the UNAT Registry what he called an "incomplete statement of appeal" so as to meet the 45-day deadline. He also asked the UNAT Registry to provide any form that he needed to fill out and a copy of the UNAT Rules of Procedure. On 16 October 2009, the UNAT Registrar acknowledged receipt of the appeal and, on behalf of UNAT's President, granted a two weeks' extension through 30 October 2009 to file his complete appeal. On 30 October 2009, the UNAT Registry received his complete appeal.

Submissions

Parker's Appeal

9. Parker first challenges UNDT's decision to order UNHCR to file additional submissions in relation to his alleged harassment. According to Parker, having found these allegations receivable, the UNDT should have proceeded to determine the merits of the case. By providing UNHCR with another opportunity to present a defence to these allegations, UNDT exercised its power in a way that results in unfairness to Parker. UNHCR already had ample opportunity to defend itself against the allegations of harassment. Parker is of the view that he has met the burden of proving that he was the subject of harassment. As UNHCR did not submit any evidence to rebut Parker's case, the UNDT should have found in his favour.

10. Parker also challenges UNDT's decision to allow UNHCR to pay him compensation, instead of quashing the decision of 7 November 2007 by which the UNHCR rescinded his appointment as SDO, Iraq Support Unit, MENA. According to Parker, article 10(5) of the UNDT Statute does not apply to situations like his, where a staff member who has been employed on an indefinite/continuing contract is placed on a

new post. This does not constitute an appointment under the United Nations Charter, the relevant Staff Regulations, and Rules, or under article 10(5) of the UNDT Statute. Parker's employment was not terminated as he was not separated from the Organization. Thus, his assignment to the Iraq Support Unit was not an "appointment" but rather an "assignment" because he was already employed on an indefinite contract. As article 10(5) of the UNDT Statute is not applicable to the impugned decision, the UNDT should have ordered UNHCR to rescind the decision without the option of paying compensation instead. Moreover, if the decision is rescinded, the medical constraints imposed on Parker would also cease to exist and would be of no further consequence or effect.

11. Parker requests that this Court:

(a) Find that the UNDT erred in ordering UNHCR to present additional submissions;

(b) Order the UNDT not to take these additional submissions into account when deciding on Parker's allegations of harassment;

(c) Issue an interim order for the UNDT to suspend its consideration of this issue, until UNAT has rendered judgment on whether the UNDT erred when it ordered UNHCR to present additional submissions;

(d) Alternatively, to postpone consideration of this appeal in this matter until the UNDT has decided on the harassment issue so that this appeal can be considered concurrently with any future appeal which may be brought against the UNDT's ultimate judgment.

12. Parker further requests that UNAT:

(a) Order UNHCR to quash the contested decision without the option of paying compensation;

(b) Affirm that the consequence of this order is that the medical constraints imposed on Parker by the contested decision are no longer of any consequence or effect.

Secretary-General's Answer

13. The Secretary-General maintains that the appeal should be dismissed as it is time-barred. In the alternative, if UNAT declares the appeal receivable, the Secretary-General

submits that the UNDT did not err in law (i) when it afforded UNHCR an opportunity to provide observations on the facts recounted by Parker on the issue of harassment and his request for compensation; or (2) when it established an amount for compensation for UNHCR to pay should it elect not to rescind the contested decision. The Secretary-General requests that Judgment UNDT/2009/13 be upheld and that the appeal be rejected in its entirety.

Considerations

14. Having examined both parties' submissions, this Court finds:

(a) That Parker's appeal is receivable since it was filed, though incomplete, on 13 October 2009, within 45 calendar days of receipt of the UNDT judgment;

(b) That the UNDT did not err when it ordered UNHCR to file additional submissions within the scope of article 18(2) of the UNDT Rules of Procedure;

(c) That the UNDT quashed the decision of 7 November 2007 on the ground that it was flawed has not been appealed;

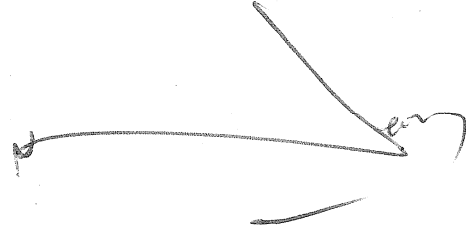
(d) That, however, the UNDT erred when it decided to give UNHCR the option to either pay compensation in the amount of five months salary (two months in lieu of reinstating Parker and three months for moral damages), or quash the decision of 7 November 2007, because article 10.5(a) of the UNDT Statute is not applicable. Parker was serving under an indefinite appointment governed by Rule 104.12 (c) of the Staff Rules (100 Series). The 7 November 2007 decision did not concern his appointment, promotion, or termination but his placement between assignments. For this reason, Article 10(5)(a) of the UNDT Statute does not apply. This provision applies to decisions in regards to appointment, promotion, or termination, but not to staff in between assignments.

Judgment

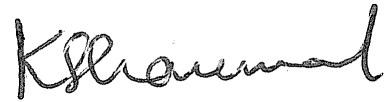
15. For the foregoing reasons, we order that Parker be reinstated. The UNDT's order that the Organization has the option to pay five months salary as an alternative is reversed, especially since his claim for moral damages will be decided in the case in which his harassment allegations will be addressed.

THE UNITED NATIONS APPEALS TRIBUNAL

Case No. 2009-003



Judge Weinberg de Roca, Presiding



Judge Garewal



Judge Boyko

Dated this 30th day of March 2010 in Geneva, Switzerland.

Original: English

Entered in the Register on this 26th day of April 2010 in New York, United States.



Weicheng Lin, Registrar, UNAT