



**UNITED NATIONS APPEALS  
TRIBUNAL  
TRIBUNAL D'APPEL DES  
NATIONS UNIES**

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**Parker  
(Appellant)**

**v.**

**Secretary-General of the United Nations  
(Respondent)**

**JUDGMENT**

**[No. 2010-UNAT-012]**

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Before: Judge Sophia Adinyira, Presiding  
Judge Inés Weinberg de Roca  
Judge Luis María Simón

Case No.: 2009-016

Date: 30 March 2010

Registrar: Weicheng Lin

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Counsel for Appellant: Nicole Lewis

Counsel for Respondent: Jessica M. Elbaz

**JUDGE SOPHIA ADINYIRA**, Presiding Judge.

**Synopsis**

1. Vincent Parker (Parker) filed an appeal against the United Nations Dispute Tribunal (UNDT)'s Judgement No. 2009/66 of 4 November 2009. Parker submits that the UNDT erred in law in excluding his non-promotion in the 2004-2005 promotion session and in dismissing his claim for harassment from 2005 to 2007. He also submits that the UNDT erred in holding that the onus was on him to submit his complaint to the Inspector General's Office (IGO) of the United Nations High Commissioner for Refugees (UNHCR). The UNDT judgment is affirmed.

**Facts and Procedure**

2. Parker joined UNHCR in May 1994. Effective February 2004, he was appointed Senior Desk Officer (SDO), at the East and Horn of Africa Desk (DEHA), Africa Bureau, in Geneva. He was not promoted at the 2004 UNHCR Annual Promotion Session. He filed a recourse, which was examined during the recourse session pertaining to the Annual Promotion Session held in 2004. His recourse did not succeed.

3. By e-mail of 6 February 2005, Parker informed the High Commissioner (HC) that he experienced difficulties in his relation with his direct supervisor, the Chief, DEHA, and requested him to personally intervene.

4. In September 2005, Parker was temporarily reassigned to the position of Senior Registration Coordinator, Division of Operational Support in Geneva.

5. On 19 September 2005, Parker's post as SDO was advertised as vacant in the relevant Biannual Compendium of Vacant Posts.

6. Effective 31 March 2006, the lien to the post he had been filling was discontinued. The relevant Personnel Action sheet indicates that the post was being abolished on that date.

7. In May 2006, Parker contacted the Secretary of the Geneva Joint Appeals Board (JAB), in view of initiating a formal appeal. The Secretary of the JAB facilitated a series of meetings with, among others, the Director, Division of Human Resources

Management, the Chief of Cabinet of the HC and the HC himself. UNHCR made a commitment to find a solution.

8. In January 2007, Parker was placed as Staff in Between Assignments (SIBA).

9. In September 2007, Parker was appointed SDO at the Middle East and North Africa Desk (MENA), Africa Bureau. By decision of 7 November 2007, this assignment was rescinded.

10. Parker challenged the 7 November 2007 decision to rescind his appointment before the UNDT. He requested that a suitable post be found for him within 6 months, that he be provided with a written apology, and that he receive reparation amounting to five years of salary for harm caused to his career and reputation and for the stress and anxiety he suffered. In Judgment No. 2009/13 dated 27 August 2009, the UNDT held that the procedure followed to rescind the appointment was flawed. That Tribunal ordered the rescission of the contested decision, or, in the alternative, the payment of two months salary compensation, pursuant to Article 10(5) of the UNDT Statute. The UNDT ordered that, before pronouncing a decision on Parker's request seeking compensation for damage suffered as a consequence of alleged harassment, UNHCR submit its observations concerning the facts recounted as well as the damage alleged within one month from the notification of the judgment.

11. On 30 October 2009, Parker filed an appeal against Judgment No. 2009/13. In particular, he argued that the UNDT erred in law in allowing UNHCR to file its Observations on the allegations of harassment and in establishing an amount that UNHCR could pay in lieu of rescinding the decision pursuant to Article 10(5) of the UNDT Statute.

12. On 4 November 2009, the UNDT rendered Judgment No. 2009/66 on the merits of the harassment allegations. It concluded that "[t]he allegations of harassment put forward by [Parker] are not established" and it accordingly rejected the request for compensation.

13. On 18 December 2009, Parker filed his appeal against the Impugned Judgment. The Secretary-General filed an Answer on 18 February 2010.

**Submissions**

14. Parker submits that the UNDT's findings were based on two errors in fact, resulting in a manifestly unreasonable decision, and an error in law, under Article 2.1 (c) and (e) of the UNAT Statute.

**UNDT's Alleged Error in Finding Inadmissible Parker's Allegations regarding his Non-Promotion during the 2004-2005 Annual Promotions Session**

**Parker's Appeal**

15. The UNDT found in Judgment No. 2009/013 that Parker's request for administrative review only covered allegations of harassment suffered from the beginning of 2005 to 7 November 2007. Parker challenges UNDT's finding that the allegations regarding his non-promotion in 2004 were inadmissible.

16. Parker contends that he had clearly raised the issue of his non-promotion during the 2004-2005 annual promotion session in his request for review as part of the allegations that UNHCR had subjected him to a pattern of harassment. The UNDT therefore erred in finding his allegations in this regard inadmissible.

17. Parker submits that in accordance with the holding of the former Administrative Tribunal in *Gedah*, (Judgment No. 754 (1996)) where a staff member was subjected to a pattern of harassment over a period of time, the individual decisions underpinning such harassment are admissible despite the fact that they would be time-barred if raised in isolation. Parker argues that he was clearly subjected to a pattern of harassment, starting with the decision not to promote him in 2004.

18. Parker further argues that his non-promotion should have been considered by the UNDT as constituting harassment.

**Secretary-General's Answer**

19. The Secretary-General submits that the appeal with respect to this issue is time-barred and should be dismissed. UNDT Judgment No. 2009/013 clearly sets forth the period of the alleged harassment.

20. The Secretary-General notes that Parker filed his appeal concerning this specific issue on 18 December 2009 in his appeal to UNDT Judgment No. 2009/066. In his request for administrative review and his submissions before the UNDT with respect to

Judgment 2009/013, Parker consistently argued that his non-promotion in 2004 constituted harassment. In Judgment No. 2009/013, the UNDT however determined that the period of the alleged harassment began in January 2005. If Parker had deemed this determination to be an error in fact which was manifestly unreasonable, he should have included this point in his appeal. Furthermore, in his Response to the Observations, Parker limited himself to the period set forth by the UNDT, i.e. January 2005 to November 2007. He therefore did not contest the period set forth by the UNDT; rather he waited until Judgment 2009/066 was issued to complain.

21. In the event that this Court does not uphold his objection to the receivability, the Secretary-General submits the following: Parker filed a Recourse Application which was considered by the Appointment, Postings and Promotions Board (APBB). The APBB concluded that Parker had provided no new information which would lead to a different result. While Parker was not satisfied with the outcome of the recourse, he did not pursue it any further by requesting administrative review. Instead of pursuing the proper channels for review, he submits that his non-promotion constituted the beginning of a pattern of harassment, a pattern that the UNDT did not find established by the facts presented by Parker. The Secretary-General furthermore reiterates that it is not in a position to provide a substantive response to Parker's claim, since the IGO of UNHCR did not conduct an investigation regarding the matter within an appropriate framework (see below).

**UNDT's Alleged Error in Finding that Lack of Proper Assignment for Parker did not Constitute Harassment**

**Parker's Appeal**

22. Parker submits that the UNDT erred when it rejected his allegation that UNHCR had subjected him to a campaign of harassment from 2005-2007. In particular, Parker alleges that the manner in which his supervisors deprived him of work constituted harassment, and that the "Respondent perpetuated the harassment".

**Secretary-General's Answer**

23. The Secretary-General submits that the appeal on this ground should be dismissed. Parker has not shown how the UNDT erred in fact, but has merely resubmitted his arguments presented already before the UNDT. However, should the UNAT find that the UNDT erred in fact, the Secretary-General reiterates the arguments set out in his Observations.

**UNDT's Alleged Error in Finding that it was up to Parker to Request IGO to Investigate**

**Parker's Appeal**

24. Parker submits that the UNDT erred in law when it found that he was obliged to submit his case to the IGO. In Parker's view, the onus was on UNHCR to submit the matter to the IGO, once it had become aware of his allegations and the fact that the matter could not be resolved by the Mediator. Parker contends that under paragraph 23 of the UNHCR's Policy on Harassment, Sexual Harassment and Abuse of Authority (UNHCR Policy) and section 5.8 of the UNHCR Inter-Office Memorandum (IOM)/Field Office Memorandum (FOM) No. 054/2005, staff members who have been subjected to harassment can choose between formal and informal procedures in order to attempt to resolve the situation. The informal procedure is to engage the Mediator who engages the parties with a view to putting an end to the harassment. If the Mediator is unable to resolve the situation, he must inform the staff member of the procedure to follow in order to submit the matter to the IGO so that the formal procedure can commence. The staff member then has the discretion to do so.

25. Parker argues that in his case, even though he engaged the services of the Mediator, UNHCR's solution was for him to apply for a new post and the Mediator was only engaged to that extent. He submits that the Mediator was thus not engaged in trying to end the harassment and prevent it from reoccurring as required under the UNHCR policy and IOM/FOM No. 054/2005. In his view, the Mediator consequently did not provide the Parker with the option of referring the matter to the IGO.

26. Parker further asserts that the ultimate responsibility of ensuring that his case was submitted to the IGO rested with UNHCR. While the staff member has the option of submitting a case to the IGO, UNHCR has the obligation to do so. In his view, this flows implicitly from Section 11 of the UNHCR Policy and from the express provisions of the IOM/FOM No. 054/2005. Section 11 of the UNHCR Policy places a positive obligation on UNHCR to take steps to prevent and stop harassment of which it is aware. He argues that by implication this means that when it is necessary to fulfill these obligations, UNHCR must submit a matter to the IGO's office. The IOM/FOM No. 054/2005 expressly confirms this. Section 5.4.2 of IOM/FOM No. 054/2005 provides that all staff have a duty to report instances of misconduct as well as any information relating to misconduct that they have observed. Section 5.11.1 provides that a manager who receives a report or other information about possible misconduct must immediately inform the

IGO. Furthermore, pursuant to Section 5.4.3 of the IOM/FOM No. 054/2005, “[s]taff should report possible misconduct either directly to the IGO or to their Director, Representative or Chief of Mission...who must then promptly inform the IGO...”. Parker concludes that even if a staff member elects not to resort to formal procedures, UNHCR is under an obligation to do so. Parker submits that the UNDT therefore erred in finding that UNHCR conformed to the procedures prescribed by the relevant rules.

**Secretary-General’s Answer**

27. The Secretary-General observes that the UNDT did not find that Parker was obliged to submit his case to the IGO. The UNDT held that once Parker opted to follow the informal process and accepted the agreement resulting from such a process, the Administration was justified not to launch further procedures once the difficulties seemed to be solved. The UNDT further held that it was reasonable that no additional fact-finding steps were undertaken, assuming that had he felt the need for an inquiry to be conducted, Parker would have made a request to this end before the IGO.

28. The Secretary-General submits that in accordance with the UNHCR’s Policy on Harassment, Sexual Harassment and Abuse of Authority, “[i]ndividuals may choose to deal with any complaint or grievance through either an informal or formal process... If the complainant is not satisfied with the results of the informal process, he/she may submit a written complaint to begin the formal process.”

29. The Secretary-General points out that in the present case, Parker availed himself of the informal process and accepted the agreement reached. As the UNDT held, it was therefore reasonable for the Administration not to take any further action. Furthermore, Parker had the option to submit his written complaint through the formal process and he chose not to do so. The Secretary-General thus concludes that Parker failed to demonstrate that the UNDT erred in law in this regard.

**Considerations**

30. Issues:

i. Is the Appeal receivable with respect to the issue of Parker’s non-promotion during the 2004-2005 Annual Promotion session?

ii. Did the UNDT err in finding on the merits that Parker had not been subjected to harassment?

iii. Did the UNDT err in finding that UNHCR was not obliged to submit the case to the IGO?

**Issue i: Is the Appeal receivable with Respect to the Issue of Parker's non-promotion during the 2004-2005 Annual Promotion Session?**

31. The UNDT found in Judgment No. 2009/13 that Parker's request for administrative review only covered allegations of harassment suffered from the beginning of 2005 to 7 November 2007. Parker challenges this as an error of fact on the ground that the UNDT did not give reasons for this finding and more particularly because he had clearly raised the issue of his non-promotion during the 2004-2005 annual promotion session in his request for review as part of the allegations that UNHCR had subjected him to a pattern of harassment. The Secretary-General on the other hand submits that the appeal on this ground is time barred as it ought to have been raised in his appeal against Judgment No.2009/013. The Secretary-General submits further that Parker in his Response to the Observations limited himself to the period set forth by the UNDT.

32. We agree that the issue on which this appeal is made was determined in Judgment No. 2009/013. Accordingly this ground may only be receivable in an appeal filed by Parker against Judgment No. 2009/013. We note that Parker did not contest the period of January 2005 to 7 November 2007 set by the UNDT in his response to the observations made by the Administration before Judgment NO.2009/066 was issued. Neither did he make any submission on the issue of his non-promotion in 2004 in his response. We also note that an appeal on this point is out of time.

33. We thus conclude that the appeal on this issue is not receivable.

**Issue ii: Did the UNDT err in finding on the merits that Parker had not been subjected to harassment?**

34. Parker submits that the manner in which his supervisors had deprived him of work after his non-promotion in 2004 amounted to harassment. Parker submits further that UNHCR perpetuated the harassment to which he was subjected when it required him to apply for a new post instead of taking measures to address such harassment.



35. The Secretary-General submits that UNHCR did address the issue through the proper procedures.

36. In relation to this issue we observe that the UNDT noted at paragraph 20 of its judgment:

Nonetheless, the Applicant does produce some evidence supporting his assertion that his hierarchy failed to assign him work for a certain period; specifically, he presents an e-mail from the then Deputy Director, Africa Bureau, to the director, DHRM ... implying that the Applicant's supervisor was withholding work from him. In this connection, it should be borne in mind that the Deputy Director, being the supervisor of both the Applicant and the Chief of DEHA, was particularly well placed to realize and assess the problems among them at the time. Moreover, due weight must be given to the fact that the Respondent did not disprove this point by producing countervailing evidence. Lack of proper assignments by early 2005 appears thus established.

37. Having said that, the UNDT went on to hold that there was insufficient evidence from which to conclude that the circumstances under which Parker was deprived of work amounted to harassment.

38. We find that, although one-off incident may amount to harassment, Parker was unable to discharge the onus to provide sufficient evidence of harassment, prejudice or any kind of improper motivation against him.

39. On the claim that UNHCR perpetrated the harassment by the method it applied to resolve the issue, the UNDT was of the view that "there is a proven record of considerable efforts deployed in order to resolve the Applicant's situation, involving the UNHCR senior management at the highest level. The HC personally met the Applicant and participated in the attempts to find an adequate solution."

40. We find that on the evidence the UNDT did not err in finding on the merits that Parker had not been subjected to harassment.

**Issue iii: Did the UNDT err in law when it found that the onus was on Parker to submit the matter to the IGO?**

41. We find no merit in this ground of appeal. We note that the UNHCR Policy provides under paragraph 18 for both informal and formal procedures to deal with complaints and grievances. It is up to a complainant, and not management, to make the choice of the process, although managers or supervisors are obligated under paragraph

12 to take all necessary action to address any known act of harassment, sexual harassment or abuse of office. Paragraph 18 provides that “[s]taff members and non-staff personnel may choose to deal with any complaint or grievances through either an informal or formal process as detailed in Sections V and VI of the present framework”.

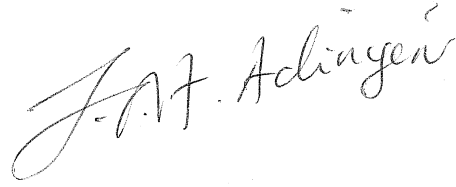
42. To that end the IGO that “is responsible for the facilitation of the formal process in dealing [with] and ensuring the investigation of allegations of misconduct”, also has the responsibility for “ensuring that the complainant is fully informed of the existence of the informal mechanism before initiating an investigation”. (Annex A of UNHCR Policy)

43. Though we agree with the UNDT that if Parker was dissatisfied with the process he ought to have applied to the IGO, we observe that the manner in which UNHCR handled the matter was rather unfortunate. It was clear from the facts that the problem was a managerial issue which UNHCR ought to have solved by assigning Parker the work as suggested by the Deputy Head of the Africa Bureau. UNHCR through its managers failed to do so until about two years into his appointment to MENA. Deprivation of substantive work, where substantiated, constitutes indeed regrettable departure from regular supervisor-supervisee relations.

44. We also note that Parker was on an indefinite appointment as SIBA from January 2007 to date. We consider such a practice to be against the interest of the Organisation as a staff member receives salary and other benefits though no work is available for him/her to do. We recommend that the Organisation revisit this type of appointment and at least put a ceiling on the duration within which a staff member can remain in such a position.

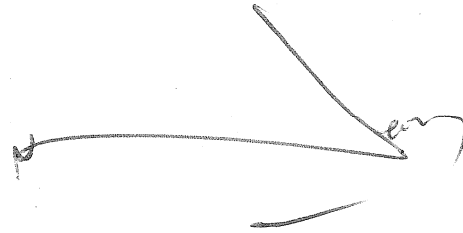
### **Judgment**

45. There is no merit in the appeal and it is therefore dismissed. We affirm the UNDT Judgment UNDT/2009/066.




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**Judge Adinyira, Presiding**



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**Judge Weinberg de Roca**



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**Judge Simón**

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.



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**Weicheng Lin, Registrar, UNAT**