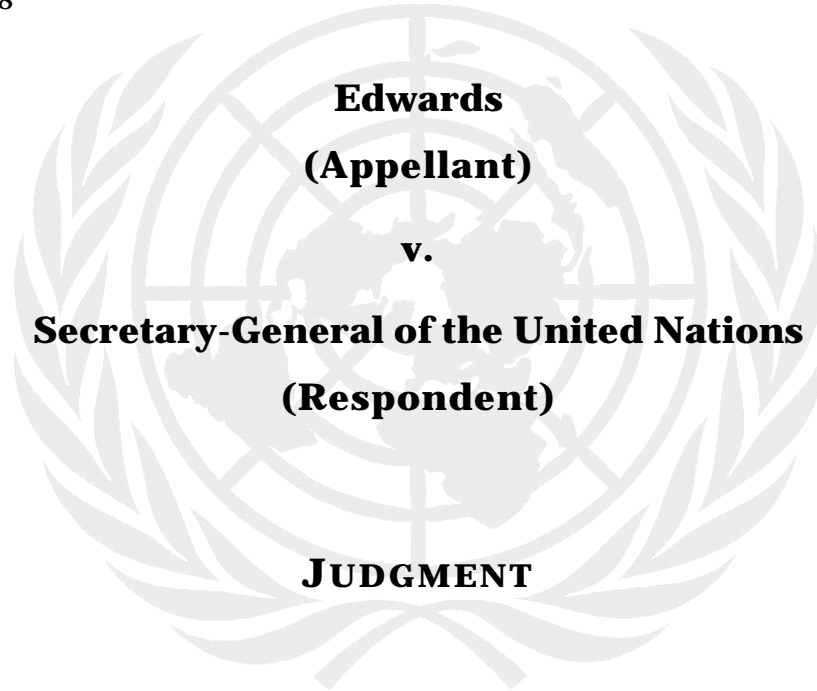




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2011-218



**Edwards
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Kamaljit Singh Garewal, Presiding Judge Sophia Adinyira Judge Mary Faherty
Judgment No.:	2012-UNAT-212
Date:	16 March 2012
Registrar:	Weicheng Lin

Counsel for Appellant: Laurence C. Fauth

Counsel for Respondent: Wambui Mwangi

JUDGE KAMALJIT SINGH GAREWAL, Presiding.

Synopsis

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal filed by Ms. Claire Edwards on 11 May 2011 against Judgment No. UNDT/2011/022/Corr.1 rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 26 January 2011 in the case of *Edwards v. Secretary-General of the United Nations*. The Secretary-General filed an answer on 27 June 2011.

2. Ms. Edwards was re-assigned to the United Nations Office at Vienna (UNOV) as an Editor at the P-3 level. She complained to the Chief of Publishing, Referencing and English Section (PRES) that her direct supervisor, the Chief of the Editorial Control Unit (ECU), PRES, had verbally abused her. Mediation was recommended but her relations with the Chief of ECU continued to deteriorate. Her health began to suffer and she went on medical leave, initially for a few days but later for weeks and months. Ms. Edwards tried a telecommuting programme which also did not help. She remained on medical leave for over a year from December 2005 to January 2007.

3. Ms. Edwards complained of harassment to the Panel on Discrimination and Other Grievances (PDOG), but that panel was unable to conclude that her medical condition was the result of the alleged harassment. She appealed to the Joint Appeals Board in Vienna (Vienna JAB), which recommended one month's net base salary as compensation for procedural shortcomings, but said nothing regarding the PDOG's report or the recommendation from Ms. Edwards' treating physician.

4. The UNDT found that the Administration had failed in its duty to create working conditions conducive to Ms. Edwards' health, but held that she had already been compensated by the Secretary-General for medical costs and re-crediting her with 339 days of medical leave.

5. Ms. Edwards claims more compensation. We feel that she has been adequately compensated. The appeal is dismissed. The UNDT Judgment is affirmed.

Facts and Procedure

6. Ms. Edwards joined the United Nations Economic and Social Commission for Asia and the Pacific in Bangkok on 29 May 1999 as an Editor at the P-2 level. She was promoted to the P-3 level in 2001. With effect from 31 January 2002, Ms. Edwards was reassigned to UNOV with the ECU/PRES. The Chief, ECU/PRES and the Chief, PRES, were Ms. Edwards' first and second reporting officers, respectively.

7. On 1 July 2004, one of the ECU staff members was promoted to the post of Chief, ECU/PRES, and became Ms. Edwards' new first reporting officer.

8. In early October 2004, Ms. Edwards reported to the Chief, PRES, that the new ECU Chief had verbally abused her. The Chief, PRES recommended mediation by the Staff Counselor.

9. In June 2005, Ms. Edwards contacted the Staff Counselor, the Medical Service, the President of the Staff Council and the Ombudsman to complain about the deteriorating relationship between her and the new ECU Chief and the harassment to which she claimed to be subjected. She was placed on medical leave from 29 June to 1 July 2005 and then from 13 July to 13 November 2005.

10. On 10 November 2005, Ms. Edwards signed a telecommuting compact for the period from 14 November 2005 to 12 May 2006. She returned to work by telecommuting on 14 November 2005, but was certified sick again soon thereafter. For more than a year from 6 December 2005 to 8 January 2007, she was placed on medical leave.

11. On 21 March 2006, Ms. Edwards filed a complaint of harassment with the PDOG.

12. On 4 May 2006, Ms. Edwards' first and second reporting officers co-signed a note to the file serving as an appraisal of Ms. Edwards' performance from 1 April 2005 to 31 March 2006.

13. The PDOG issued a report dated 21 June 2006 on Ms. Edwards' complaint of harassment. The PDOG was unable to conclude that Ms. Edwards' medical condition was the result of the alleged harassment, but it suggested that she be transferred to a different service, where the pace of work would be less intense.

14. In June and July 2006, Ms. Edwards contacted the Office for Internal Oversight Services (OIOS), a member of her performance rebuttal panel, the Human Resources Management Service (HRMS), and the Ombudsman's Office in New York for advice on how to proceed with her harassment complaint, her rebuttal of the PDOG's report and her rebuttal of the note to the file. In mid-July 2006, HRMS advised Ms. Edwards of the options available to her and provided her with a list of conflict resolution bodies.

15. On 21 August 2006, Ms. Edwards wrote to the Secretary-General contesting the report of the PDOG, the note to the file containing her performance appraisal, the failure to investigate her harassment complaint and the disregard of the recommendation of her treating physician to adjust her working hours and productivity targets. She filed an appeal with the Vienna JAB on 1 December 2006.

16. In its report dated 28 March 2008, the Vienna JAB concluded that the absence of a formal procedure for dealing with claims of harassment was a "serious lacuna" and recommended that Ms. Edwards be awarded one month's net base salary in compensation for the procedural shortcomings. The Vienna JAB also concluded that the inclusion of the note to the file in Ms. Edwards' official status file (OSF) without first giving her an opportunity to comment on it was not in accord with her right to due process. It recommended that the note to the file be withdrawn from Ms. Edwards' OSF. The Vienna JAB made no recommendation in respect of Ms. Edwards' contentions concerning the PDOG and the recommendation of her treating physician.

17. In a letter dated 28 July 2008, the Deputy Secretary-General conveyed to Ms. Edwards the decision taken by the Secretary-General in light of the Vienna JAB report. The Secretary-General did not agree with the JAB that Ms. Edwards' rights to due process had been violated, and consequently decided to reject the Vienna JAB's recommendation to award Ms. Edwards one month's net base salary as compensation. But he agreed with the Vienna JAB on the issue of the note to the file and decided to accept its recommendation to withdraw that document from Ms. Edwards' OSF.

18. On 12 October 2009, the Advisory Board for Compensation Claims (ABCC) recommended, in connection with Ms. Edwards' claim pursuant to Appendix D to the Staff Rules, that the Secretary-General acknowledge Ms. Edwards' illness as attributable to the performance of official duties on behalf of the United Nations and consequently compensate

her for the medical costs that she had incurred and the days of medical leave that she had taken between 13 July 2005 and 21 March 2007. The Secretary-General decided to follow the ABCC's recommendation.

19. Ms. Edwards' application to the former Administrative Tribunal against the Secretary-General's above-referenced decision was transferred to the UNDT on 1 January 2010.

20. In Judgment No. UNDT/2011/022/Corr.1, the UNDT concluded that Ms. Edwards had not proven that the Administration had failed to take appropriate action on her complaint of harassment or that she was the victim of harassment. The UNDT found that the Administration had failed in its duty to create working conditions conducive to Ms. Edwards' health, but that she had been fully compensated for the material damage that she had suffered as the Secretary-General had decided to compensate her for the medical costs that she had incurred in obtaining treatment for her illness as well as re-crediting her with 339 days of medical leave. The UNDT considered that the illness from which Ms. Edwards suffered due in part to the Administration's breach of its duty caused her moral damage, which the UNDT assessed at two months' net base salary. In addition, the UNDT awarded Ms. Edwards half a month's net base salary for the excessive delay of more than four years in dealing with her grievances.

Submissions

Ms. Edwards' Appeal

21. The UNDT failed to articulate the legal standard by which to judge whether the Administration had taken appropriate action on her harassment complaint. In the view of Ms. Edwards, where a staff member makes a harassment complaint, the Administration must address the complaint by proposing both informal and formal methods of resolution; it was insufficient for the Administration to merely cite different policies and leave it to the staff member to sort them out; the Administration has a duty to enforce any agreement reached in mediation; and where the informal efforts prove fruitless, as in the present case with the PDOG, the Administration must formally investigate the matter.

22. The UNDT erred in fact, ignored critical evidence regarding whether the Administration had taken the appropriate action on her harassment complaint and whether Ms. Edwards had been subjected to harassment. It was a fact that Ms. Edwards had been subjected to harassment, for which she should be compensated.

23. The UNDT erred in law and in fact in failing to award an adequate amount of compensation for the breach of duty to provide a safe and healthy working environment and for the delay.

24. The UNDT erred in law in finding that the re-crediting of 339 sick leave days was sufficient compensation for the material damage for the proven breach, when that compensation pertained to her Appendix D claims for service-incurred illness. Ms. Edwards suffered separate material damage including damage to her career advancement. The 2008 decision not to promote her to the P-4 level was just one example.

25. Ms. Edwards maintains that she should be compensated for moral damage in an amount significantly above the two months' net base salary that the UNDT awarded her, as she had been subjected to neglect and other aggravating factors, which resulted in emotional stress and long periods of sick leave.

26. The UNDT's award of half a month's net base salary for the delay of almost five years was inadequate and inconsistent with the Appeals Tribunal's Judgment in *Asaad*,¹ in which the Appeals Tribunal awarded the appellant one month's net base salary for the excessive delay of almost five years.

Secretary-General's Answer

27. The UNDT correctly applied the relevant legal standard in its determination of whether the Administration had taken appropriate action on Ms. Edwards' harassment complaint. It correctly found that Ms. Edwards failed to establish that she was the victim of harassment.

¹ *Asaad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-021.

28. The UNDT correctly concluded that the compensation that the Administration had paid to Ms. Edwards for medical costs and the re-crediting of 339 sick leave days represented the full compensation for her material damage. Ms. Edwards has not demonstrated any error on the part of the UNDT that would warrant a reconsideration of the compensation of two months' net base salary for moral damage and half a month's net base salary for the delay in addressing her appeal.

29. The fact that the UNDT did not mention in its Judgment each "action" that Ms. Edwards cited in her UNDT application does not mean that the UNDT ignored her submissions.

Considerations

30. Ms. Edwards appeals the quantum of damages awarded by the UNDT, which upheld moral damages for suffering illness "partly caused by the Administration's breach of its duty to create working conditions conducive to [Ms. Edwards'] health", and awarded compensation equivalent to two months' net base salary.

31. Ms. Edwards also claims compensation for the excessive delay of more than four years, from the date she requested administrative review to the date of the UNDT Judgment. Under this head she has been awarded compensation equivalent to half a month's net base salary.

32. We think Ms. Edwards has been adequately compensated. It is true that she faced some form of harassment after July 2004, when one of her ECU colleagues was promoted Chief of the unit. It seems that the Chief demanded a higher work output from Ms. Edwards in terms of number of pages edited and required her to work longer hours. But these are work-related pressures. Unless Ms. Edwards can show that she was singled out to work more than her similarly-placed colleagues, it will be difficult to classify the Chief's actions as harassment in the strict sense of the word.

33. Ms. Edwards first complained of harassment in early October 2004 and her grievance was that her complaints had not been properly addressed. She was informed of the various guidelines but nothing was done to stop the harassment. It may be said that failure to properly address complaints of harassment can amount to continued or heightened harassment of the complainant. This could well have been the case with Ms. Edwards. For

this reason, she has been compensated by the UNDT, though she claims for more compensation. According to the UNDT her case was one of failure of the Administration to create a proper work-place atmosphere, free of harassment.

34. Ms. Edwards' case is that she suffered various bouts of illnesses on account of the harassment. The record shows that she remained on sick leave from 29 June to 1 July 2005 and then from 13 July to 13 November 2005 and after working for a few weeks she again went on leave from 6 December 2005 to 8 January 2007. The ABCC recognized Ms. Edwards' illness as attributable to the performance of official duties in the service of the United Nations. This conclusion was accepted by the Secretary-General. Ms. Edwards was compensated for the medical costs incurred and 339 days were credited to her account as medical leave.

35. There really appear to be no grounds to increase the compensation awarded to Ms. Edwards.

Judgment

36. The appeal is dismissed. The UNDT Judgment is affirmed.

Original and Authoritative Version: English

Done this 16th day of March 2012 in New York, United States.

(Signed)

Judge Garewal, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Faherty

Entered in the Register on this 7th day of May 2012 in New York, United States.

(Signed)

Weicheng Lin, Registrar