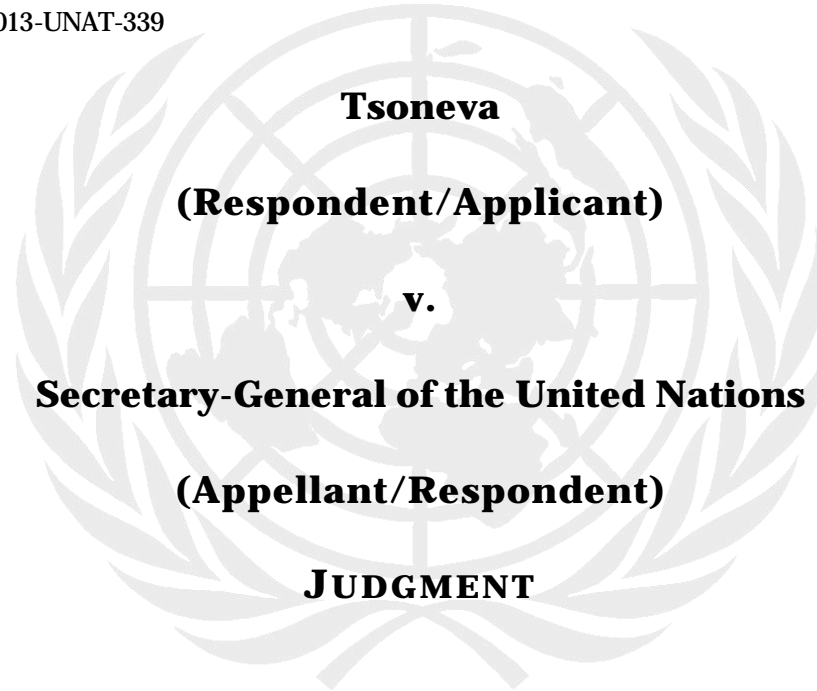




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2013-UNAT-339



Tsoneva

(Respondent/Applicant)

v.

Secretary-General of the United Nations

(Appellant/Respondent)

JUDGMENT

Before: Judge Richard Lussick, Presiding
Judge Inés Weinberg de Roca
Judge Sophia Adinyira

Case No.: 2012-376

Date: 21 June 2013

Registrar: Weicheng Lin

Counsel for Respondent/Applicant: Self-represented

Counsel for Appellant/Respondent: Simon Thomas

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Valentina Tsoneva against Judgment No. UNDT/2012/112, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 20 July 2012 in the case of *Tsoneva v. Secretary-General of the United Nations*. The Secretary-General appealed on 12 September 2012, and Ms. Tsoneva answered on 15 October 2012.

Facts and Procedure

2. Ms. Tsoneva joined the Office of the High Commissioner for Refugees (UNHCR) in September 2000. In December 2007, she was appointed as a Senior Contracts Officer for UNHCR with responsibilities including the directing of the Contracts Unit in Geneva, within the Supply Management Service of the Division of Emergency, Security and Supply (Division).

3. In December 2011, Ms. Tsoneva and the Director of the Division (Director) met, upon Ms. Tsoneva's request, to discuss certain difficulties faced by the Contracts Unit due to understaffing at the time. At this meeting, the Director informed Ms. Tsoneva that it was intended to transfer her unit to Budapest for operational reasons and that, accordingly, it would be proposed to abolish Ms. Tsoneva's post. On 28 December 2011, the Director wrote to Ms. Tsoneva confirming the intention to abolish her post as of 1 July 2012 and to create a new post with a revised job description in Budapest. The Director specified that these measures would be submitted to UNHCR's Budget Committee.

4. On 29 December 2011, Ms. Tsoneva requested a meeting with the Director of the Division of Human Resources Management (Director, DHRM) in order to discuss her career options. Later that day, the Director, DHRM, confirmed that they had met and had discussed the procedural aspects related to the management of posts during their discussion.

5. By memorandum dated 6 January 2012 addressed to UNHCR's Budget Committee, the Director asked for approval to discontinue three posts, including Ms. Tsoneva's post.

6. By letter dated 30 January 2012, the Director informed Ms. Tsoneva that UNHCR's Budget Committee had confirmed the discontinuance of her post effective 1 August 2012.

7. Ms. Tsoneva contested the decision before the UNDT, which disposed of the application by Judgment No. UNDT/2012/112 issued on 20 July 2012. The UNDT found that UNHCR did not follow the procedures applicable to the discontinuance of a post.

In particular, the UNDT found that the Director failed to comply with the “Procedural Guidelines for Changes in the Status of Positions” (IOM/FOM/27/2009) (Procedural Guidelines) in that Ms. Tsoneva was not asked to meet with the Director following the receipt of the written notification of his intention to discontinue her post. The UNDT considered that the meeting of 27 December 2011 did not comply with the Procedural Guidelines since it was held before she had received written notification.

8. Accordingly, the UNDT annulled the decision to discontinue the post. The UNDT also held that the violation of Ms. Tsoneva’s right to be “consulted in the manner prescribed” resulted in moral damages, and on this basis, awarded compensation in the amount of CHF 2,000.

Submissions

The Secretary-General’s Appeal

9. The UNDT erred in concluding that the Organization failed to comply with the procedures applicable to the discontinuation of a post, as set forth in the Procedural Guidelines and in the “Policy and Procedures on Assignments and Promotions” (IOM/FOM/33/2010) (Policy). The UNDT’s conclusion that the mandatory discussion must follow the written notification and must be initiated by the Administration is flawed.

10. The relevant procedures regarding informing and discussing the discontinuation of a post with the staff member were adhered to. Contrary to the wording of the Judgment, neither the Procedural Guidelines nor the Policy requires a “consultation” of the staff member. In accordance with the Procedural Guidelines, the manager must merely discuss and inform the staff member of the anticipated discontinuation before referring the matter to the Budget Committee and inform the staff member of the outcome determined by the Budget Committee.

11. The Secretary-General submits that the UNDT erred in concluding that Ms. Tsoneva had suffered moral harm and awarding her compensation. Firstly, as Ms. Tsoneva had no right of consultation, she cannot be compensated for a breach thereof. Secondly, in accordance with the jurisprudence of this Tribunal, there must be sufficient evidence of moral injury, in order for compensation to be awarded. In the present case, Ms. Tsoneva was awarded compensation on mere speculative grounds.

12. Thus, the Secretary-General requests this Tribunal to vacate the Judgment in its entirety.

Ms. Tsoneva's Answer

13. The UNDT concluded correctly that the rules stipulated in the Procedural Guidelines were not adhered to. The first stage in the process is to inform the staff member of the intention to discontinue a position; then the intention is to be discussed (Paragraph 1 of Procedural Guidelines).

14. While a discussion with the staff member prior to the referral of the matter to the Budget Committee is mandatory, Ms. Tsoneva was only informed once the decision had already been taken.

15. The UNDT did not err in awarding compensation for moral damages suffered.

16. Ms. Tsoneva, therefore, requests this Tribunal to dismiss the appeal in its entirety.

Considerations

17. The UNDT held that the procedure leading to the discontinuation of Ms. Tsoneva's position was improper and thus the decision to do so was flawed.

18. The applicable procedures for discontinuation of a post are set out in the Procedural Guidelines and the Policy.

19. Paragraph 1 of the Procedural Guidelines states:

When a manager intends to seek a reclassification or review, including discontinuation ... of a position encumbered by a staff member ... the Manager must inform the staff member in writing that a reclassification/review of the position is being sought. Such information should be relayed to the incumbent of the position before submission of the request to the Budget Committee It is therefore the responsibility of the manager to discuss proposed changes in position status directly with the staff members concerned. In all cases, standard procedures as set out in the Staff Administration and Management Manual ... are to be followed.

20. Paragraph 18 of the Policy provides:

When a manager intends to request a ... discontinuation ... of a position encumbered by a staff member ... the manager is encouraged to inform the staff member of his or her intent in writing. As soon as a decision to change the status of the position has been taken, the manager must formally notify the staff member in writing of the decision and the effective date of the change of status of the position.

21. The UNDT found that the Director did not comply with the Procedural Guidelines in that Ms. Tsoneva was not asked to meet with the Director following her receipt on 28 December 2011 of the written notification of his intention to discontinue her position. The UNDT considered that the meeting held on 27 December 2011 between Ms. Tsoneva and the Director, in which the discontinuation of her position was discussed, did not comply with the Procedural Guidelines since it was held before she had received the written notification.

22. At paragraph 24 of its Judgment, the UNDT concluded that:

It is clear from the aforementioned provisions that the procedure for informing concerned staff members begins when they are notified in writing that the discontinuation of their positions is being considered. The manager must then consult the concerned staff members so that they may submit their comments before the Budget Committee takes the final decision. While the Applicant was able to discuss the possible discontinuation of her position on 27 December 2011 in a meeting with the Director of the Division that she herself had requested, that meeting took place before the Applicant received written notification of the Administration's intention and cannot be considered to have replaced the meeting required under the aforementioned paragraph 1 of [the Procedural Guidelines].

23. We disagree with the UNDT's interpretation of the prescribed procedure. There is no requirement in either the Procedural Guidelines or the Policy that the staff member's meeting with the manager must take place after the staff member has received written notification. The only temporal requirement imposed by the procedure is that the manager must inform the staff member of the intention to request a discontinuation of the position in writing before submission of the request to the Budget Committee. The manager is charged with the responsibility of discussing proposed changes in position status directly with a staff member, but there is no specific requirement in the Procedural Guidelines of when such discussion should take place. Furthermore, there is no requirement in either the Procedural Guidelines or the Policy that the manager must "consult" a concerned staff member.

24. In the present case, the Director discharged his responsibility of discussing with Ms. Tsoneva the discontinuation of her position when he met with her on 27 December 2011. On 28 December 2011, he informed her in writing of his intention to request the discontinuation of her position. The fact that this written notification followed the discussion is immaterial. The Director later submitted his request to the Budget Committee on 6 January 2012. The Director thus complied with the prescribed procedure.

25. Consequently, we find that the UNDT's Judgment constitutes an error of law which cannot be allowed to stand. Having found that the Administration complied with the applicable procedure, the award of moral damages must equally be reversed.

Judgment

26. The appeal is allowed and the Judgment of the UNDT is vacated in its entirety.

Original and Authoritative Version: English

Done in New York, United States.

(Signed)

Judge Lussick, Presiding
28 June 2013

(Signed)

Judge Weinberg de Roca
21 June 2013

(Signed)

Judge Adinyira
21 June 2013

Entered in the Register on this 26th day of August 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar