



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

Judgment No. 2015-UNAT-505

**Benfield-Laporte
(Appellant/Respondent)**

v.

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

JUDGMENT

Before: Judge Inés Weinberg de Roca, Presiding
Judge Luis María Simón
Judge Deborah Thomas-Felix

Case Nos.: 2014-575 & 2014-580

Date: 26 February 2015

Registrar: Weicheng Lin

Counsel for Ms. Benfield-Laporte: Victor Rodriguez

Counsel for Secretary-General: Phyllis Hwang/John Stompor/Stéphanie Cartier

JUDGE INÉS WEINBERG DE ROCA, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it two appeals against Judgment No. UNDT/2013/162, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Geneva on 5 December 2013 in the case of *Benfield-Laporte v. Secretary-General of the United Nations* (Impugned Judgment). On 3 February 2014, Ms. Gillian Benfield-Laporte filed an appeal with the Appeals Tribunal against the Impugned Judgment (Case No. UNAT-2014-575). On 4 February 2014, the Secretary-General filed his appeal (Case No. UNAT-2014-580). The Secretary-General and Ms. Benfield-Laporte respectively answered the appeal in Case No. UNAT-2014-575 and Case No. UNAT-2014-580 on 1 April and 14 April 2014.

Facts and Procedure

2. Ms. Benfield-Laporte worked for the former Director-General, United Nations Office at Geneva (UNOG), as Personal Assistant/Administrative Assistant for many years. After his departure she worked as Personal Assistant/Administrative Assistant (G-7) to a new Director-General, UNOG.

3. On 3 November 2011, Ms. Benfield-Laporte was informed by the new Director-General that she needed to immediately fill a post at the Staff Development and Learning Section (SDLS), UNOG. On the same day, the Director of Administration, UNOG, informed her that the transfer would be effective 8 November 2011.

4. On 4 November 2011, a memorandum from the Officer-in-Charge, Chef de Cabinet, Director-General's Office, UNOG, informed Ms. Benfield-Laporte of her lateral reassignment to SDLS as of 8 November 2011.

5. The Chief, SDLS, UNOG—to whom Ms. Benfield-Laporte was supposed to report on 8 November 2011—informed her that there was no urgency. With his approval, Ms. Benfield-Laporte went on annual leave and started with SDLS on 28 November 2011.

6. On 30 December 2011, Ms. Benfield-Laporte's previous position within the Director-General's Office was advertised in Inspira.

7. On 6 June 2012, upon the advice of the Office of Internal Oversight Services (OIOS), Ms. Benfield-Laporte filed a complaint for abuse of authority with the Assistant Secretary-General for Human Resources Management (ASG/OHRM) under Secretary-General's Bulletin ST/SGB/2008/5¹ on the basis of the manner in which her lateral reassignment came about.
8. On 18 June 2012, the ASG/OHRM advised Ms. Benfield-Laporte to first file a request for management evaluation.
9. On 2 July 2012, Ms. Benfield-Laporte requested management evaluation of the decision to laterally reassign her to SDLS, and on 6 July 2012, the Management Evaluation Unit (MEU) declared her request time-barred.
10. On 30 July 2012, Ms. Benfield-Laporte forwarded the MEU reply to the ASG/OHRM asking that the matter be pursued under ST/SGB/2008/5.
11. During September and October 2012, the ASG/OHRM contacted the Director-General, UNOG, to request his comments on the issues raised by Ms. Benfield-Laporte in her complaint, and the Director-General, UNOG replied.
12. On 3 December 2012, the Chef de Cabinet of the Secretary-General informed the Director-General, UNOG, that a formal fact-finding investigation into Ms. Benfield-Laporte's complaint would not be initiated. The Director-General was reminded to take great care when communicating decisions to staff members that they may consider adverse to their interests.
13. By memorandum dated 3 December 2012 and e-mailed to Ms. Benfield-Laporte on 7 December 2012, the ASG/OHRM informed Ms. Benfield-Laporte of her decision not to initiate a formal fact-finding investigation into Ms. Benfield-Laporte's complaint of abuse of authority for lack of sufficient grounds.
14. On 5 February 2013, Ms. Benfield-Laporte submitted a request for management evaluation regarding the decision not to initiate a fact-finding investigation into her complaint.
15. On 19 March 2013, Ms. Benfield-Laporte was informed by the Under-Secretary-General for Management that the challenged decision was upheld.

¹ ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority), 11 February 2008.

16. On 17 June 2013, Ms. Benfield-Laporte submitted an application to the Dispute Tribunal contesting the decision to refuse to conduct a formal fact-finding investigation into her complaint of abuse of authority made against the Director-General, UNOG, under ST/SGB/2008/5.

17. On 5 December 2013, the Dispute Tribunal rendered the Impugned Judgment. The Tribunal found that the ASG/OHRM did not err in deciding that Ms. Benfield-Laporte's complaint against the Director-General, UNOG, did not provide sufficient grounds to warrant a formal fact-finding investigation. The Tribunal also found that while the behaviour demonstrated by the Director-General constituted an improper way to handle an uncomfortable situation, it was not such as to constitute a possible abuse of authority.

18. Nonetheless, two procedural irregularities flawed the decision, namely the six-month delay by the ASG/OHRM in reaching its decision was unjustified and undue and violated the requirement of Sections 5.3 and 5.14 of ST/SGB/2008/5 that such review be prompt, and the fact that the ASG/OHRM asked the alleged offender for his views before taking the contested decision breached Section 5.14 of ST/SGB/2008/5.

19. The Dispute Tribunal awarded Ms. Benfield-Laporte compensation for emotional distress and anxiety in the amount of USD 3,000 in view of the six-month delay by the Administration in communicating its decision to her.

Submissions

Case No. 2014-580

The Secretary-General's Appeal

20. The UNDT erred in concluding that the ASG/OHRM had no discretion as to how she conducted her review and assessment of the abuse of authority complaint, as it was not possible for the responsible official to assess whether a complaint was "made in good faith" or whether "there [were] sufficient grounds to warrant a formal fact-finding investigation" as required by ST/SGB/2008/5 by only looking at the complaint itself. Absent a discretion to assess whether allegations are well-grounded or made in good faith a majority of complaints filed would require a formal fact-finding investigation even when an investigation is unwarranted, to the detriment of the Organization's limited resources.

21. The UNDT also erred in concluding that the ASG/OHRM violated ST/SGB/2008/5 by requesting the comments of the Director-General on the complaint. The fact that Section 5.15 of ST/SGB/2008/5 provides that a “[fact-finding] panel shall inform the alleged offender of the nature of the allegation(s) against him or her” does not mean that such panel has exclusive responsibility for contacting the alleged offender. Furthermore, it is reasonable for officials to contact the alleged offender in order to meaningfully determine whether the Director-General was improperly motivated, a key component of deciding whether there are sufficient grounds to open an investigation into abuse of authority. In contacting the UNOG Director-General the ASG/OHRM acted in accordance with this Tribunal’s ruling in *Abboud*.²

22. The UNDT erred in concluding that there was an unjustified and undue delay in reviewing Ms. Benfield-Laporte’s complaint. In making this finding the UNDT discounted, first, the almost eight-week period, during which Ms. Benfield-Laporte, upon the advice of OHRM, pursued a management evaluation; as well as the six-week period from September to October 2012, during which the ASG/OHRM was obtaining information from the Director-General.

23. The UNDT further erred in awarding compensation for moral damages as a result of an “inordinate delay” in handling Ms. Benfield-Laporte’s complaint insofar as Section 5.14 of ST/SGB/2008/5 does not provide for any deadline to be respected and such award is contrary to the Appeals Tribunal’s jurisprudence in *Kamal*.³ The factual circumstances of the four cases upon which the UNDT relied as authority for the award of moral damages were also materially different from those in the present case. In conclusion, as there was no breach of a staff member’s rights Ms. Benfield-Laporte was not entitled to any compensation for moral damages.

Ms. Benfield-Laporte’s Answer

24. Ms. Benfield-Laporte challenges the Secretary-General’s argument that it was appropriate for the ASG/OHRM to request the comments of the Director-General, and submits that the Appeals Tribunal’s ruling in *Abboud* concerns whether to initiate a preliminary investigation for the purposes of unsatisfactory misconduct under Administrative Instruction ST/AI/371, entitled “Revised disciplinary measures and procedures”, and is thus irrelevant to the present complaint of abuse of authority.

² *Abboud v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-100.

³ *Kamal v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-204, para. 26.

25. Concerning the Secretary-General's argument that the "unjustified and undue delay" in reaching a prompt decision was improperly calculated, Ms. Benfield-Laporte submits the UNDT rightly considered the matters of lateral transfer and abuse of authority to be two distinct administrative decisions with different time frames. Even discounting the five weeks spent requesting management evaluation of the lateral reassignment decision, OHRM was aware as of 11 July 2012, and again notified on 30 July 2012 that she intended to pursue her abuse of authority complaint with the ASG/OHRM.

26. Ms. Benfield-Laporte submits that she is not seeking rescission of the decision but rather moral damages in an amount which falls within the Tribunal's discretion to determine. Concerning moral damages, Ms. Benfield-Laporte distinguishes the Appeals Tribunal's ruling in *Kamal* on its facts.

Case No. 2014-575

Ms. Benfield-Laporte's Appeal

27. Ms. Benfield-Laporte contends that the UNDT erred insofar as it failed to draw all the necessary consequences from the fact that the contested decision violated Section 5.14 of ST/SGB/2008/5. In particular, although the Dispute Tribunal found that the decision-making procedure of the ASG/OHRM was flawed in two respects, the Dispute Tribunal only awarded her compensation for one of the procedural irregularities, namely the six-month delay by the Administration in communicating its decision to her.

28. Further, notwithstanding that the UNDT found two procedural irregularities marred the decision-making process, the UNDT failed to order rescission of the contested decision, unlike the UNDT in *Oummih*,⁴ which ordered rescission based on the same irregularities that arose in the present case.

29. Ms. Benfield-Laporte requests "adequate monetary compensation and any additional relief that the Appeals Tribunal may consider appropriate for moral damage".

⁴ *Oummih v. Secretary-General of the United Nations*, Judgment No. UNDT/2014/004.

The Secretary-General's Answer

30. The Secretary-General submits that there is no legal basis to support an order for rescission of the ASG/OHRM's decision as the UNDT found that the ASG/OHRM correctly decided that Ms. Benfield-Laporte's complaint did not provide sufficient grounds to warrant a formal fact-finding investigation. In any event, the Appeals Tribunal's jurisprudence in a series of cases involving promotion exercises has held that the UNDT erred in rescinding a non-selection decision and in awarding compensation in lieu of rescission, based on a procedural irregularity that would not have changed the outcome of the selection process. The same reasoning applies to the present case.

31. The Secretary-General also submits that the UNDT's Judgment in *Oummih* is under appeal before this Tribunal on the same point. In any event, the rescission of a decision not to initiate a formal fact-finding investigation of a complaint must ultimately be based on the facts of each individual case.

32. Furthermore, the Secretary-General reiterates that the UNDT erred in awarding compensation for moral damages on the basis of unjustified and undue delay in reviewing Ms. Benfield-Laporte's complaint, and submits the ASG/OHRM acted fully within her discretionary authority under ST/SGB/2008/5 in requesting the UNOG Director-General to comment on Ms. Benfield-Laporte's complaint. Ms. Benfield-Laporte has also failed to satisfy either criterion of the two-pronged test outlined by this Tribunal in *Asariotis*⁵ for the award of moral damages.

33. Accordingly, Ms. Benfield-Laporte's appeal should be dismissed in its entirety.

Considerations

34. In the instant case, Ms. Benfield-Laporte lodged a complaint for abuse of authority against her former supervisor. She had been the Personal Assistant/Administrative Assistant to the Director-General of UNOG and complained because of his behaviour when laterally transferring her to a new post.

35. Ms. Benfield-Laporte contested the decision of the Administration to refuse to conduct a formal fact-finding investigation into her complaint and appealed before the UNDT.

⁵ *Asariotis v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-309, para. 36.

36. The UNDT Judgment decided that there was no legal basis for the ASG/OHRM to contact the alleged offender for comments, as this was the exclusive responsibility of the fact-finding panel. As such, the UNDT found that the Administration breached Section 5.14 of Secretary-General's Bulletin ST/SGB/2008/5 in requesting comments of the alleged offender before reaching its decision as to whether the conduct which was the subject of the complaint may constitute abuse of authority. Furthermore, the UNDT decided that it was for the panel and not the Administration to decide which facts merited investigation.

37. As a general principle, the instigation of disciplinary charges against a staff member is the privilege of the Organization itself, and it is not legally possible to compel the Administration to take disciplinary action.⁶ Concerning complaints of abuse of authority, Sections 5.14 and 5.15 of ST/SGB/2008/5 provide:

5.14 Upon receipt of a formal complaint or report, the responsible official will promptly review the complaint or report to assess whether it appears to have been made in good faith and whether there are sufficient grounds to warrant a formal fact-finding investigation. If that is the case, the responsible office shall promptly appoint a panel of at least two individuals from the department, office or mission concerned who have been trained in investigating allegations of prohibited conduct or, if necessary, from the Office of Human Resources Management roster.

5.15 At the beginning of the fact-finding investigation, the panel shall inform the alleged offender of the nature of the allegation(s) against him or her. In order to preserve the integrity of the process, information that may undermine the conduct of the fact-finding investigation or result in intimidation or retaliation shall not be disclosed to the alleged offender at that point. This may include the names of witnesses or particular details of incidents. All persons interviewed in the course of the investigation shall be reminded of the policy introduced by ST/SGB/2005/21 [(Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations)].

38. In our view, the ASG/OHRM has a degree of discretion as to how to conduct a review and assessment of a complaint and may decide whether an investigation regarding all or some of the charges is warranted. Where there was no risk of undermining the investigation, it is good practice to hear both sides in order to decide whether there are sufficient grounds to warrant establishing a formal fact-finding investigation and assigning a case to a panel.

⁶ *Abboud v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-100, para. 34.

39. The reasonableness of this procedure is corroborated by the UNDT Judgment itself which found that the situation experienced on 3 November 2011 by Ms. Benfield-Laporte with the Director-General constituted “a very single, isolated and short incident” during which no dispute arose and no offensive language was used.⁷ Moreover, as the UNDT noted, Ms. Benfield-Laporte accepted that the Director-General had the right, and was acting within his competence, when he chose to select his own team.⁸ The UNDT Judgment concluded that the ASG/OHRM did not err in deciding that Ms. Benfield-Laporte’s complaint did not provide sufficient grounds to warrant a formal fact-finding investigation.⁹ This Tribunal finds no discernible error in the approach or reasoning of the Dispute Tribunal.

40. The Secretary-General challenges the UNDT’s award of compensation for emotional distress and anxiety caused by the six-month delay in deciding Ms. Benfield-Laporte’s complaint, and the UNDT’s finding that the process took six months. We concur with the UNDT Judgment that a period of six months to communicate the decision not to open a formal fact-finding investigation is far from prompt. In this regard, we reject the argument that the UNDT erred in including in its calculation the time spent by OHRM in obtaining comments from the Director-General; as the ASG/OHRM chose to undertake this action in order to reach its decision, it is not open to the Secretary-General to seek to discount the time spent in undertaking that action from the entire decision-making process. Furthermore, even if this Tribunal were to accept the Secretary-General’s argument that the UNDT erred in including the almost eight-week period during which Ms. Benfield-Laporte, at the direction of OHRM, sought MEU review, we find that four months nevertheless remains far from prompt.

41. This Tribunal has held that while not every violation of due process rights will necessarily lead to an award of compensation, damage, in the form of neglect and emotional stress, is entitled to be compensated. The award of compensation for non-pecuniary damage does not amount to an award of punitive or exemplary damages designed to punish the Organization and deter future wrongdoing.¹⁰

42. We affirm the UNDT decision to grant compensation in the amount of USD 3,000 for the delay in handling Ms. Benfield-Laporte’s complaint.

⁷ Impugned Judgment, para. 50.

⁸ *Id.*, para. 50.

⁹ *Id.*, para. 51.

¹⁰ *Wu v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-042, para. 33.

43. In her appeal, Ms. Benfield-Laporte requests additional compensation with respect to the procedural violation arising from the ASG/OHRM contacting the Director-General of UNOG prior to reaching her decision. The Appeals Tribunal, contrary to the UNDT, has already found that this did not amount to a procedural irregularity or a violation of Section 5.14 of ST/SGB/2008/5. Consequently, this ground of appeal is rejected.

44. Ms. Benfield-Laporte's appeal also raised the failure of the UNDT to order rescission of the ASG/OHRM's decision not to open a fact-finding investigation. The UNDT Judgment noted that Ms. Benfield-Laporte did not request rescission in her UNDT application.¹¹ The answer filed by Ms. Benfield-Laporte in April 2014 in response to the Secretary-General's appeal indicates Ms. Benfield-Laporte abandoned this request. In any event, in view of this Tribunal's agreement with the UNDT that Ms. Benfield-Laporte's complaint did not provide sufficient grounds warranting a formal fact-finding investigation, there is no legal basis for ordering rescission of the ASG/OHRM's decision.

Judgment

45. The Secretary-General's appeal is upheld in part and the UNDT Judgment is reversed in relevant part. The UNDT's Judgment on compensation is affirmed.

46. Ms. Benfield-Laporte's appeal is dismissed.

¹¹ Impugned Judgment, para. 52.

Original and Authoritative Version: English

Dated this 26th day of February 2015 in New York, United States.

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Simón

(Signed)

Judge Thomas-Felix

Entered in the Register on this 17th day of April 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar