



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

Judgment No. 2015-UNAT-519

**Ivanov
(Appellant)**

v.

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

JUDGMENT

Before: Judge Deborah Thomas-Felix, Presiding
Judge Rosalyn Chapman
Judge Luis María Simón

Case No: 2014-594

Date: 26 February 2015

Registrar: Weicheng Lin

Counsel for Appellant: Joseph Grinblat

Counsel for Respondent: Amy Wood

JUDGE DEBORAH THOMAS-FELIX, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Serguey Ivanov against Judgment No. UNDT/2014/022, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in New York on 25 February 2014 in the case of *Ivanov v. Secretary-General of the United Nations*. Mr. Ivanov appealed on 25 March 2014, and the Secretary-General answered on 23 May 2014.

Facts and Procedure

2. The following facts are uncontested:¹

... [Mr. Ivanov] contests the decision of the Under-Secretary-General (“USG”), Department of Economic and Social Affairs (“DESA”), dated 28 February 2011, not to take further action in response to his complaint of harassment and abuse of authority, including his refusal to provide him a copy of the investigation report. The decision was made following the finding made by the Investigation Panel appointed by the USG/DESA that the alleged harasser “may not necessarily be in breach” of the Secretary-General’s bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority).

[...]

... On 12 April 2010, [Mr. Ivanov] submitted via email a letter entitled “Work Place Harassment” and requested “that appropriate action should be taken to prevent any further recurrence of this harassment, and to compensate [him] for [his] sufferings”. In the letter, [Mr. Ivanov] alleged that he had been the victim of workplace harassment and abuse of authority since 2004.

... On 3 August 2010, the Chief, Personnel Section, Executive Office, DESA, informed two staff members that they had been appointed “to conduct a fact-finding investigation of a case of allegation of harassment, in accordance with ST/SGB/2008/5”. On 13 August 2010, the fact-finding panel completed an investigation work plan for the purpose of investigating [Mr. Ivanov]’s allegations and, on 9 September 2010, the investigation panel interviewed [Mr. Ivanov].

¹ Impugned Judgment, paras. 1, 4-9.

... On 7 December 2010, [Mr. Ivanov] received a memorandum from the Executive Officer, DESA, containing a summary of the investigation panel's findings into his complaint, which stated that the panel had concluded that "the conduct of [his chief] may not necessarily be in breach of ST/SGB/2008/5".

... On 9 December 2010, [Mr. Ivanov] acknowledged receipt of the 7 December 2010 memorandum, stating that he was "not satisfied with the summary of the findings of the investigation panel [and that he] would appreciate it very much if [the Executive Officer] could provide [him] with the full report of the fact-finding investigation. Learning the facts established by the investigation panel and contained in this report will allow [him] to prepare detailed comments".

... On 17 December 2010, the Executive Officer, DESA, responded to [Mr. Ivanov], informing him "that pursuant to ST/SGB/2008/5, the investigation is confidential and the final report is with the Head of Department for a final decision in accordance with section 5.18 of ST/SGB/2008/5".

... On 28 February 2011, the USG, DESA responded to [Mr. Ivanov]'s 14 February 2011 request that he be provided with an update regarding the status of his complaint, informing him that "[i]n view of the conclusion by the investigation panel, no further action will be taken by my Office with regard to you [sic] complaint".

3. Mr. Ivanov appealed. In Judgment No. UNDT/2014/022, the Dispute Tribunal first addressed Mr. Ivanov's submission regarding his right to obtain a copy of the investigation report. Based on Section 5.18(a) of ST/SGB/2008/5, the Dispute Tribunal determined that Mr. Ivanov was not entitled to receive a detailed copy of the investigation report but rather only a summary of its findings and conclusion, which he in fact received on 7 December 2010. Noting the jurisprudence set forth in *Adorna*² and *Haydar*,³ the Dispute Tribunal considered that Mr. Ivanov did not identify any exceptional circumstances that would justify diverging from the requirement that he only be provided with a summary of the investigation panel's findings.

4. The Dispute Tribunal rejected Mr. Ivanov's appeal against the decision taken by the USG/DESA not to take any further action and close the case on Mr. Ivanov's complaint of work place harassment. The Dispute Tribunal found no evidence that the investigation panel failed to gather sufficient evidence before issuing its report and further noted that the

² *Adorna v. Secretary-General of the United Nations*, Judgment No. UNDT/2010/205.

³ *Haydar v. Secretary-General of the United Nations*, Judgment No. UNDT/2012/201.

decision to initiate or take action against a staff member lies wholly within the discretion of the Secretary-General.

5. Mr. Ivanov filed an appeal with the Appeals Tribunal.

6. On 2 July 2014, the Appeals Tribunal issued Order No. 193 (2014) denying Mr. Ivanov's "Motion for Leave to present Comments on Respondent's Answer" filed on 27 May 2014. The Appeals Tribunal held that Mr. Ivanov did not demonstrate the existence of exceptional circumstances which would justify the need to file an additional submission.

Submissions

Mr. Ivanov's Appeal

7. The Dispute Tribunal erred on a question of law and fact in denying him a copy of the investigation report as Mr. Ivanov was not claiming his right to receive a copy under the terms of ST/SGB/2008/5, but rather in order to establish that there were errors in facts in the summary of the report that he had received. Mr. Ivanov considers his request for the investigation report to constitute a fundamental right in "all democratic justice systems" in which documents used by one party in a dispute have to be made available to the other party.

8. The Dispute Tribunal erred in fact resulting in a manifestly unreasonable decision. Mr. Ivanov disagreed with the finding that there was no evidence that the investigation panel failed to gather sufficient evidence before issuing its report or that there were medical reasons to reject some of his mission related proposals. He further disagreed with the implication that he never raised his concerns about the supervisor's behavior with his supervisor. Mr. Ivanov finds the investigation panel and the Dispute Tribunal "guilty" of the error of not verifying the facts with him and not gathering enough evidence.

9. Mr. Ivanov requests the Appeal Tribunal to: (i) find that his due process rights were violated; (ii) order that a copy of the investigation report be given to him; (iii) allow him 30 days after he receives the investigation report to submit a more elaborate appeal; and (iv) award him at least two years' salary for violation of his due process rights, years of psychological and emotional suffering and loss of salary and retirement pension resulting from his non-promotion to P-5 as a result of the harassment to which he was subjected.

The Secretary-General's Answer

10. In accordance with established jurisprudence, the Dispute Tribunal conducted judicial review of the decision by examining whether the procedures set forth in Section 5 of ST/SGB/2008/5 were properly followed. The Dispute Tribunal does not have authority to engage in a fact-finding exercise or to substitute its discretion for that of the Head of Office in assessing an investigation report. Mr. Ivanov failed to provide evidence to support his claims of mistakes of fact.

11. To the extent that Mr. Ivanov framed his right to the investigation report as the right of a litigant to have access to evidence, the Dispute Tribunal properly exercised its discretion in the management of this case by not ordering the production of the investigation report given that Mr. Ivanov had failed to provide evidence to support his allegations of error in the investigation report.

The Secretary-General's Cross-Appeal

12. The Dispute Tribunal erred on a matter of law by reviewing the decision of the Administration not to grant Mr. Ivanov a copy of the investigation report as the claim was non-receivable *ratione materiae*. While Mr. Ivanov requested the Management Evaluation Unit to provide him with a copy of the investigation report, he did not request review of the Administration's decision not to provide him with a copy.

13. However, if the Dispute Tribunal is assumed to have jurisdiction over the Administration's decision to deny Mr. Ivanov a copy of the investigation report, the Dispute Tribunal properly upheld the decision as he was only entitled to a summary of the findings and conclusions of the investigation per Section 5.18(a) of ST/SGB/2008/5. The Dispute Tribunal also considered that Mr. Ivanov failed to present exceptional circumstances which might otherwise have entitled him to the investigation report.

14. Mr. Ivanov failed to provide any evidence that his rights have been violated or that he has suffered any harm. Accordingly, his claim for compensation should be dismissed.

Considerations

15. The procedure to be adopted after a formal complaint or report has been received on issues of workplace harassment is clearly outlined in Secretary-General's Bulletin ST/SGB/2008/5.

16. This procedure provides, inter alia, for the appointment of a fact-finding panel into the allegations; the said panel is mandated to prepare a detailed report and submit this report to the responsible official normally within a period of three months.

17. Section 5.18(a) of ST/SGB/2008/5 clearly provides that if the findings of the report concluded that no prohibited conduct took place the case is closed. The responsible official is duty bound in such a case to inform the alleged offender and the aggrieved individual of the outcome by giving them a summary of the findings and conclusions of the investigation. Such a summary was provided to Mr. Ivanov.

18. The matter is a closed matter and Mr. Ivanov has not presented any cogent argument to show that there are exceptional circumstances which might otherwise have entitled him to the investigation report. In those circumstances, Mr. Ivanov is not entitled to receive a detailed copy of the investigation report.

19. There is no evidence to support Mr. Ivanov's arguments that the UNDT erred on questions of law and fact; as a result, Mr. Ivanov's request for redress and compensation is rejected.

Judgment

20. The appeal is dismissed and the Judgment of the UNDT is affirmed.

Original and Authoritative Version: English

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

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Chapman

(Signed)

Judge Simón

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

(Signed)

Weicheng Lin, Registrar