



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

Judgment No. 2015-UNAT-572

**Ivanov
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Deborah Thomas-Felix, Presiding Judge Rosalyn Chapman Judge Inés Weinberg de Roca
Case No.:	2014-664
Date:	30 October 2015
Registrar:	Weicheng Lin

Counsel for Mr. Ivanov:	Joseph Grinblat
Counsel for Secretary-General:	Nathalie Defrasne

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/2014/117, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 25 September 2014 in the case of *Ivanov v. Secretary-General of the United Nations*. Mr. Ivanov appealed on 13 October 2014, and the Secretary-General answered on 11 December 2014.

Facts and Procedure

2. Mr. Ivanov was a Population Affairs Officer in the Department of Economic and Social Affairs (DESA). On 28 October 2011, his supervisor wrote to the Under-Secretary-General (USG) for DESA a memorandum in which he detailed his concern about Mr. Ivanov's behaviour, including the latter's "inappropriate communications and his continued antagonism towards" his supervisor and other colleagues and Mr. Ivanov's "reported health problems". In the view of the supervisor, those health problems appeared to have produced "severe limitations" on Mr. Ivanov's ability to carry out his work and "negative impact" on the productivity and professional environment within DESA.

3. After the 28 October 2011 memorandum came to Mr. Ivanov's attention, on 5 January 2012, Mr. Ivanov lodged a complaint with the USG/DESA against his supervisor for defamation and harassment and requested an investigation and possible disciplinary measures against his supervisor. On 10 January 2012, the Office of the USG/DESA acknowledged receipt of Mr. Ivanov's complaint.

4. On 13 April 2012, the USG/DESA appointed an Investigation Panel.

5. On 26 November 2012, the Investigation Panel submitted its report to the USG/DESA. Its main finding was that the submission of the 28 October 2011 memorandum did not amount to harassment per ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority), and that the disagreements between Mr. Ivanov and his supervisor were performance-related and fell outside the scope of ST/SGB/2008/5.

6. In a memorandum dated 8 January 2013, the Executive Officer, DESA, informed Mr. Ivanov of the conclusions of the Investigation Panel in respect of his 28 October 2011 complaint against his supervisor.

7. On 9 January 2013, Mr. Ivanov wrote to the USG/DESA to express his disagreement with the conclusions of the Investigation Panel as conveyed by the Executive Officer.
8. On 16 January 2013, the Executive Officer, DESA, informed Mr. Ivanov that based on a review of the Investigation Panel's report, the USG/DESA decided, on 9 January 2013, to close the case "without proposing further action in accordance with sec. 5. 18 of ST/SGB/2008/5".¹
9. On 26 January 2013, Mr. Ivanov requested management evaluation of the decision to close the case in respect of his defamation and harassment complaint.
10. In a letter dated 19 March 2013, the USG for the Department of Management (DM) informed Mr. Ivanov of the outcome of the management evaluation conducted by the Management Evaluation Unit (MEU). The MEU noted that more than three months had elapsed between the filing of Mr. Ivanov's complaint and the establishment of the Investigation Panel contrary to the requirement for "prompt review" set forth in Section 5.14 of ST/SGB/2008/5.²

¹ Section 5.18 of ST/SGB/2008/5 reads (internal citation omitted):

On the basis of the report, the responsible official shall take one of the following courses of action:

(a) If the report indicates that no prohibited conduct took place, the responsible official will close the case and so inform the alleged offender and the aggrieved individual, giving a summary of the findings and conclusions of the investigation;

(b) If the report indicates that there was a factual basis for the allegations but that, while not sufficient to justify the institution of disciplinary proceedings, the facts would warrant managerial action, the responsible official shall decide on the type of managerial action to be taken, inform the staff member concerned, and make arrangements for the implementation of any follow-up measures that may be necessary. Managerial action may include mandatory training, reprimand, a change of functions or responsibilities, counselling or other appropriate corrective measures. The responsible official shall inform the aggrieved individual of the outcome of the investigation and of the action taken;

(c) If the report indicates that the allegations were well-founded and that the conduct in question amounts to possible misconduct, the responsible official shall refer the matter to the Assistant Secretary-General for Human Resources Management for disciplinary action and may recommend suspension during disciplinary proceedings, depending on the nature and gravity of the conduct in question. The Assistant Secretary-General for Human Resources Management will proceed in accordance with the applicable disciplinary procedures and will also inform the aggrieved individual of the outcome of the investigation and of the action taken.

² Section 5.14 of ST/SGB/2008/5 states:

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

However, the MEU concluded that despite the “three-month investigation” requirement in Section 5.17 of ST/SGB/2008/5, the Investigation Panel had justified the delay beyond the three-month “norm”. The MEU concluded that the USG/DESA’s decision to close the case did not violate Mr. Ivanov’s rights under ST/SGB/2008/5 or the Staff Rules. In light of the management evaluation, the USG/DM conveyed to Mr. Ivanov the Secretary-General’s decision to uphold the USG/DESA’s decision to take no further action regarding his complaint, but to compensate him in the amount of USD 1,000 for the delay in violation of the “prompt review” requirement of Section 5.14 of ST/SGB/2008/5.

11. Mr. Ivanov refused to accept the compensation of USD 1,000 offered by the Secretary-General. On 15 April 2013, he filed an application with the Dispute Tribunal contesting the decision to take no further action in respect of his defamation and harassment complaint.

12. On 25 September 2014, the Dispute Tribunal issued Judgment No. UNDT/2014/117 and granted Mr. Ivanov’s application, in part. It found Mr. Ivanov’s due process rights to have not only his complaint promptly reviewed, but also an investigation panel promptly appointed and have the Investigation Panel finalize its report within three months had been violated. On that basis, the UNDT awarded Mr. Ivanov USD 2,300 as compensation for delays: USD 1,000 for delay in having his complaint promptly reviewed and assessed by the responsible official and USD 1,300 for delay by the Investigation Panel in completing its report. The Dispute Tribunal otherwise dismissed Mr. Ivanov’s application on the merits, concluding that he was only entitled to receive a summary of the findings and conclusions of the Investigation Panel but not its full report. Moreover, it found that there was no legal basis for the UNDT to rescind the USG/DESA’s decision to close the case or to make recommendations regarding the appropriate measures to be taken in relation to the investigation.

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.

Submissions

Mr. Ivanov's Appeal

13. The Dispute Tribunal erred in fact in quoting the MEU as saying that Mr. Ivanov had declined the compensation of USD 1,000 offered by the Secretary-General. Mr. Ivanov declined USD 1,000 because he refused to accept the attached condition that he withdraw his defamation and harassment complaint. The UNDT also erred in stating that Mr. Ivanov filed his closing submission on 18 August 2014, when he had filed it on 15 August 2014.

14. The Dispute Tribunal erred in law when it concluded that Mr. Ivanov was not entitled to the full report of the Investigation Panel. There is no regulation forbidding him from receiving such a report. Furthermore, the UNDT's conclusion is inconsistent with the basic practice in the Organization and all democratic justice systems that any document available to one party of a dispute is to be made available to the other party.

15. The Dispute Tribunal erred both in fact and in law in finding that accusing Mr. Ivanov of having medical problems that endangered his colleagues and mental health problems was not "harassment" within the meaning of ST/SBG/2008/5, but was related to performance issues.

16. The Dispute Tribunal erred in law in stating that it did not have authority to request a new investigation.

17. Mr. Ivanov requests that this Tribunal find that he was a victim of harassment in the form of defamation and his due process rights were violated, and order that he be given a copy of the report of the Investigation Panel so that he can defend himself against the false allegations. Furthermore, Mr. Ivanov requests that the Appeals Tribunal award him an unspecified monetary compensation for the emotional stress and the damage to his reputation and career caused by the false allegations.

The Secretary-General's Answer

18. The Dispute Tribunal correctly concluded that Mr. Ivanov was not entitled to the full report of the Investigation Panel. The Administration had no further obligation under ST/SGB/2008/5 after it had provided Mr. Ivanov with the full and verbatim conclusions of the Investigation Panel.

19. As the UNDT correctly concluded, there was no legal basis to rescind the USG/DESA's decision to close Mr. Ivanov's case or to open a new investigation. The Dispute Tribunal found that, apart from the procedural delays which violated the requirements of ST/SGB/2008/5, the Administration had correctly followed the investigation procedures outlined therein. Consequently, there was no reason for the UNDT to quash the report of the Investigation Panel and order a new investigation.

20. Mr. Ivanov is not entitled to further compensation. His claim for compensation is not warranted and should therefore be rejected.

21. The Respondent requests that this Tribunal dismiss the appeal in its entirety and affirm the impugned Judgment.

Considerations

22. One of the main issues for consideration is whether the UNDT erred in its conclusions that Mr. Ivanov was not entitled to a full investigation report after the Investigation Panel found that his supervisor's conduct against which he had filed a complaint on 28 October 2011 did not amount to harassment within the meaning of ST/SGB/2008/5, but instead reflected performance-related disagreements.

23. When a formal complaint or report of workplace harassment is received, the procedure to be adopted is clearly outlined in the Secretary-General's Bulletin ST/SGB/2008/5. This procedure provides, inter alia, for the appointment of a fact-finding panel to look into the allegations; the said panel is mandated to prepare a detailed report and submit this report to the responsible official within a period of three months of receipt of the formal complaint.

24. Under Section 5.18(a) of ST/SGB/2008/5, if the report of an investigation panel concludes that no prohibited conduct took place, the responsible official will close the case. The responsible official must also inform the alleged offender and the aggrieved individual of the outcome of the case by providing them with a summary of the findings and the conclusions of the investigation.³

³ *Ivanov v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-519. See footnote 1 for Section 5.18(a).

25. In this case, a summary of the findings and conclusions of the Investigation Panel was provided to Mr. Ivanov. He disagreed with these findings and sought to have them reviewed. This request was denied.

26. Mr. Ivanov, though entitled to receive a summary of the findings of the investigation report, is not entitled to receive a copy of the full investigation report as he is requesting. His case is closed and he therefore will have to present convincing arguments to show that there were exceptional circumstances which might otherwise have entitled him to the full investigation report.⁴ He did not present any argument of exceptional circumstances. We uphold the findings of the Dispute Tribunal in this regard.

27. The role of the Dispute Tribunal is not to rehear evidence that was before an investigation panel to determine if the decision is correct or not.⁵ The role of the Dispute Tribunal is to ensure that the process which is adopted by the investigation panel is transparent and that there is procedural fairness by the adherence to the provisions of the Secretary-General's Bulletin ST/SGB/2008/5 and the applicable regulations and rules.

Is there a legal basis to award Mr. Ivanov compensation for the delay in the hearing of his complaint?

28. The Dispute Tribunal awarded Mr. Ivanov USD 2,300 as compensation for delays. The issue of compensation must be viewed in the context of whether the failure of the Investigation Panel to comply with the statutory requirement that investigations be concluded within three months of the date of the formal complaint has prejudiced the hearing of Mr. Ivanov's case and violated his rights under ST/SGB/2008/5 or the Staff Rules. Mr. Ivanov lodged a complaint with the USG/DESA against his supervisor on 5 January 2012. On 13 April 2012, the Investigation Panel was appointed and on 26 November 2012, the Investigation Panel submitted its report, some seven months after the three months' deadline.

29. The Appeals Tribunal has stated that "[c]onsistent with the jurisprudence of this Tribunal [...], not every administrative wrongdoing will necessarily lead to an award of compensation under Article 10(5)(b) of the UNDT Statute. The claimant carries the burden of

⁴ *Ibid.*, para. 18.

⁵ See *Mashour v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-483.

proof about the existence of factors causing damage to the victim's psychological, emotional and spiritual wellbeing."⁶

30. Mr. Ivanov has presented no evidence to prove that the violation of the three-month deadline has undermined the investigation and the outcome of the complaint, or that he has suffered actual prejudice. Therefore, we find the Administration's offer of USD 1,000 reasonable and see no reason to increase this amount. We therefore quash the Dispute Tribunal's order and award of USD 2,300 to Mr. Ivanov and affirm the USG/DM's decision to pay him USD 1,000 for delays.

31. We have considered all the other grounds of appeal proffered by Mr. Ivanov and find that they are without merit.

Judgment

32. The appeal is dismissed. The Judgment of the Dispute Tribunal is upheld, except for its order of additional compensation, which is vacated.

⁶ *Massabni v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-238, para. 32, citing *Wu v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-042. See also *Asariotis v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-309, paras. 36-38.

Original and Authoritative Version: English

Dated this 30th day of October 2015 in New York, United States.

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Chapman

(Signed)

Judge Weinberg de Roca

Entered in the Register on this 18th day of December 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar