



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

Judgment No. 2018-UNAT-885

**Rehman
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Richard Lussick, Presiding Judge Sabine Knierim Judge Martha Halfeld
Case No.:	2018-1178
Date:	26 October 2018
Registrar:	Weicheng Lin

Counsel for Ms. Rehman:	Self-represented
Counsel for Secretary-General:	Amy Wood

JUDGE RICHARD LUSSICK, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2018/039/Corr.1, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 15 March 2018, in the case of *Rehman v. Secretary-General of the United Nations*. Ms. Rafia Rehman filed the appeal on 13 May 2018, and the Secretary-General filed his answer on 16 July 2018.

Facts and Procedure

2. The following facts are uncontested:¹

... On 26 January 2016, the Applicant [a former staff member of the United Nations International Children's Emergency Fund (UNICEF)] filed a complaint with [the Office of Internal Audit and Investigation (OIAI)] against her former supervisor, the Chief of the Education Section at UNICEF, [Pakistan Country Office (PCO)], Islamabad ("Chief of the Education Section"), citing UNICEF's Executive Directive on Prohibition of discrimination, harassment, sexual harassment and abuse of authority ("CF/EXD/2012-007"). In her complaint, the Applicant listed various incidents of alleged ill treatment, discrimination, harassment, humiliation and abuse of authority that she allegedly suffered at the hands of the Chief of the Education Section.

... The Applicant also complained that she believed she was a victim of a web of conspiracy and that she was being framed by certain staff members, including the former UNICEF Representative PCO and the Chief of the Education Section, especially in relation to the allegations raised against her with respect to the fraudulent payment of a hotel bill.

... On 21 March 2016, the Applicant filed another complaint requesting an investigation into the former Chief of Human Resources of UNICEF, Islamabad, for abuse of authority and discrimination. The Applicant's complaint contained a list of incidents from 2015 to 2016.

... On 22 March 2016, the Applicant wrote to OIAI seeking information about the status of her 26 January 2016 complaint.

... In an email of 23 March 2016, OIAI replied to the Applicant confirming that her 26 January 2016 complaint would be examined and requesting her to provide additional information/clarifications and to complete a form. [The Investigation Specialist informed Ms. Rehman that the allegations of fraud against her had been closed and that OIAI's actions were in accordance with established policies and procedures. She sought further details and information regarding Ms. Rehman's

¹ Impugned Judgment, paras. 9-20.

complaint that her supervisor had influenced other staff members against her with respect to these fraud allegations. The Investigation Specialist also requested Ms. Rehman to explain how she had received the documentation or on what basis she believed that her former supervisor came up with a “scheme” to “set her up with respect to the fraud allegations. She also noted that this was the first time that Ms. Rehman was reporting being harassed by her former supervisor. On 11 April 2016, Ms. Rehman replied to the Investigation Specialist, providing her with an explanation to the requested information and with accompanying annexes.]^[2]

... On 12 April 2016, the Applicant wrote to OIAI inquiring about the status of her 21 March 2016 complaint. She received a response on the same day from the Chief of Investigations, OIAI (“COI”) informing her *inter alia* that her 26 January 2016 complaint was time-barred. [The response reads as follows:

As you were notified by my colleague, [Investigation Specialist] the case of allegations of entitlement fraud against you was closed in October 2015, with no further action against you. You have now made counter allegations that you were harassed by your supervisor (...) since 2013 and by the evidence you have put forward in this complaint the matter has been time-barred as per the policy (excerpt below):

Filing a complaint

5.10 Any person may file a complaint. No anonymous complaints will be accepted.

5.11 The complaint should be submitted in writing, be signed and dated, to the Director, Office of Internal Audit and Investigations, with a copy to the Director, Division of Human Resources, within six months from the most recent alleged incident.

Thank you for being in touch and good luck with your future endeavours.]^[3]

... On 13 April 2016, the Applicant replied to the COI expressing her disappointment and frustration with his reply, clarifying the different claims she had filed, explaining why she believed that her claims were not time-barred and asking him to reconsider his decision contained in his email of 12 April 2016.

... On 14 April 2016, the COI replied to the Applicant expressing regret that she had misunderstood the question of time-limits and advising her that there was nothing that OIAI could do with respect to her complaints. [The e-mail *inter alia* reads as follows:

I am sorry that you have misunderstood the protocol on time limits regarding cases of harassment, because it is about when the last incident of alleged

^[2] See *ibid.*, paras. 29 and 30.

^[3] See *ibid.*, para. 32.

harassment took place that counts, not the date that you last reported it. The latest case that you have quoted in your emails was 7 October when you were told that your contract would not be renewed. OIAI can see nothing contrary to the fact that your contract was not renewed due to lack of funding.]^[4]

... On 19 and 21 April 2016, the Applicant filed other complaints of harassment and abuse of authority against the former Chief of Human Resources, the Chief of Education Section, the Country Representative and three other staff members, all from UNICEF, PCO.

... On 13 May 2016, the COI, OIAI, wrote to the Applicant regarding her complaints and made some observations on them. [His email reads as follows:

Dear Rafia,

With reference to your allegations of discrimination against [the] Chief of Human [Resources], who has been with UNICEF Pakistan since January 2015. I have now reviewed all of the documents you supplied and have the following observations:

1. You said that your salary grant and funds have been diverted from Gender Thematic Grant to facilitate other staff members who are on [temporary appointment (TA)] contracts and thereby discriminating against you as a programme assistant in the Education Section. Could this have been a legitimate operational decision?
2. On 13 November you had meeting with the Rep. Ms Angela Kearney concerning the renewal of your contract, with detailed discussions. Regardless of minutes not being provided, what was the outcome of that discussion as you understood it?
3. With regards to the positions that you have applied for, the responses to your queries appear to be as they would normally be during a recruitment process, and although I am not in a position to judge your candidacy against other applicants, but looking at the process it seems to have conformed to the usual standards. I see that you have submitted a request for a Management Evaluation of the recruitment process as you feel that your qualifications should have secured you an interview if not the job.
4. The fact that you blame Ms Mitchell specifically for not informing you of the results of the recruitment processes in good time and consider that a deliberate discrimination seems unusual, because as you are aware, the successful applicant would be the first to be notified and only after that person has accepted would the other candidates be told that they were unsuccessful. That process can often take a few weeks.

^[4] *Ibid.*, para. 35.

5. The fact that you were selected to take part in varying stages of the recruitment process for different jobs, tends to suggest that you were assessed on your merits for each job and indeed not discriminated against.]^[5]

The Applicant responded on 17 May 2016 [offering explanations related to her complaint] and later, on 8 June 2016, requested management evaluation of the decision of OIAI to close her complaints without conducting investigations.

... On 13 July 2016, the COI wrote to the Applicant as a result of her management evaluation request *inter alia* informing her about OIAI's assessment of her complaints and explaining why OIAI did not find any basis for investigating them.

... By letter dated 15 July 2016, the Deputy Executive Director, Management, UNICEF responded to the Applicant's request for management evaluation providing her with the reasons to uphold the contested decision, namely OIAI's decision to close and not to investigate her complaints.

[... By application filed on 22 October 2016 [with the UNDT], the Applicant (...) challenge[d] the decision of [OIAI] to close the investigation into complaints of harassment, discrimination and abuse of authority, lodged by the Applicant against other staff members.]^[6]

3. The UNDT rendered its Judgment on 15 March 2018 granting the application in part. It found that OIAI had failed to apply the required reasonable level of care when reviewing and handling Ms. Rehman's complaints. Regarding her first complaint against her former supervisor, the UNDT considered that Ms. Rehman had not been provided with a reasoned decision as to why her complaint had been found to be time-barred. With respect to her second complaint against the then Chief of Human Resources, UNICEF, PCO, the UNDT found that it did not appear from the COI's communications that he had fully reviewed and properly analysed her complaint but rather that he had hastily dismissed it. The Dispute Tribunal considered that OIAI had failed to issue a reasoned report, informing Ms. Rehman of how OIAI had assessed her complaints and reached a conclusion that they did not warrant an investigation. In the absence of such a report, the UNDT rescinded the decisions of the COI of 12 and 14 April 2016 and remanded Ms. Rehman's complaints of 26 January and 21 March 2016 to the Director, OIAI, UNICEF, "for a new thorough, proper, comprehensive and reasoned examination based on the rules governing complaints of harassment and abuse of authority",⁷ ordering that the re-examination be completed within 60 days of the issuance of the Judgment, and that the COI and Investigation Specialist who had previously handled her complaints be recused from dealing with her case. Moreover, the UNDT

^[5] See *ibid.*, para. 38.

^[6] *Ibid.*, para. 1.

⁷ *Ibid.*, para. 50.

awarded Ms. Rehman moral damages in the amount of USD 1,000 based on her submission that the improper handling of her complaints has caused her “mental stress and anxiety”.⁸ However, the UNDT declined to award moral damages for alleged harm to her reputation, finding that Ms. Rehman had failed to provide evidence of such harm.

4. On 27 April 2018, the Secretary-General submitted an “application for an extension of time limit on specific performance” to the UNDT explaining that due to limited resources available, OIAI, UNICEF would not be able to complete a new examination of Ms. Rehman’s case within the prescribed 60-day time limit. He requested “120 calendar days from the date of issuance of the judgement, or 60 calendar days from the date the judgement will become executable” assuring that the examination would be completed “by 13 July 2018 at the latest”.

Submissions

Ms. Rehman’s Appeal

5. Ms. Rehman submits that the UNDT erred on questions of fact as it disregarded several important facts which were contained in the submitted documents and had been discussed at the oral hearing. She also refers to the “application for an extension of time limit on specific performance” filed by the Secretary-General with the UNDT on 27 April 2018, which demonstrates that the Secretary-General spent 43 days of the specified 60 days of the issuance of the Judgment without any progress to comply with the UNDT’s directions.

6. Ms. Rehman asserts that the UNDT erred in finding that she had failed to present proof of how being subject to an investigation had caused harm to her reputation and career. In fact, the UNDT failed to take into consideration that all staff members of PCO Islamabad had been informed by the former UNICEF Country Representative of the visit of the investigator and that her being interrogated led to rumors and speculations about her credibility. The harm to her career becomes apparent from her unjustified separation from service with her being the only concerned staff member who was not invited to a farewell ceremony. The UNDT also failed to properly examine the stress she had faced due to the unjustified accusations of fraud by her former supervisor, which could have resulted in disciplinary action potentially ending her career.

⁸ *Ibid.*, para. 48.

7. Moreover, Ms. Rehman argues that the UNDT failed to take into consideration that the lack of proper information about the outcome and details of the decisions on her complaints had prevented her from pursuing her “proper legal right” to bring a suit in a local court under a Pakistani defamation law against the involved hotel officials who had made false allegations against her and had wrongly accused her of fraud. Such recourse is now time-barred.

8. By way of remedy, Ms. Rehman asks for a referral for accountability according to Article 9(5) of the Appeals Tribunal Statute. She further requests compensation in the amount of USD 500,000 for having been prevented from pursuing legal action in local courts. Moreover, in view of the fact that she has still not been officially notified of the outcome of her three complaints, she requests compensation in the amount of USD 15,000 for the violation of her “due legal rights”. Arguing that the award of USD 1,000 in moral damages was not “equitable or realistic”, Ms. Rehman further requests USD 250,000 in addition to two-years’ net base salary to “restore her professional, physical and emotional suffering”. Finally, she asks for USD 30,000 as compensation for “irregularities and ignorance” of her request for management evaluation, which violated her “due legal rights” and “enhanced stress, anxiety and depression for her and her family”.

The Secretary-General’s Answer

9. The Secretary-General submits that Ms. Rehman has failed to establish any reversible error by the UNDT. First, Ms. Rehman’s claims as they relate to her alleged right to pursue legal action in the national courts of Pakistan, fall outside the scope of jurisdiction of both the UNDT and the Appeals Tribunal and do not challenge an appealable administrative decision. She does not have a “right” under the terms and conditions of her employment to bring a course of action in a national court and the UNDT lawfully declined to consider the impact on potential courses of action before national courts as it is not vested with jurisdiction to consider issues related to the national law of member states. Second, Ms. Rehman’s allegations of a “conspiracy” not to disclose the outcome of the investigation which hindered her from bringing legal action must fail because, according to established Appeals Tribunal jurisprudence, it is for staff members to prove improper motives and Ms. Rehman has failed to forward any evidence other than her own bare assertions in this regard. Lastly, Ms. Rehman’s appeal is limited to an expression of her discontentment and dissatisfaction with the UNDT Judgment, which is insufficient to sustain her appeal.

10. Furthermore, the Secretary-General argues that Ms. Rehman has failed to establish any basis for the Appeals Tribunal to increase the award of compensation by the UNDT or to award further compensation on any other basis. First, the purported error by the UNDT that Ms. Rehman relies upon to justify her request for additional compensation, namely the infringement of her alleged rights before Pakistani national courts, does not exist. Second, Article 10(5)(b) of the Statute of the Dispute Tribunal requires evidence of harm for an award of compensation. The Appeals Tribunal has repeatedly stated that the sole testimony of the applicant is insufficient evidence of harm and a mere violation of the rules, absent any evidence of harm, does not justify an award of moral damages. Therefore, the UNDT did not err in rejecting Ms. Rehman's claim for compensation for alleged harm to her reputation, which was not supported by evidence. Finally, Ms. Rehman has failed to show how her case is "exceptional" warranting an award of damages exceeding the limit of two years' net base salary contained in Article 10(5) of the UNDT Statute.

11. In light of the foregoing, the Secretary-General requests that the appeal be dismissed and the Judgment affirmed.

Considerations

12. We deal first with an error in the UNDT Judgment which has not been appealed by the Secretary-General. We find that the UNDT erroneously awarded Ms. Rehman moral damages of USD 1,000 for "mental stress and anxiety" stemming from the improper handling of her complaints. The only evidence of moral harm before the UNDT came from Ms. Rehman.

13. The UNDT's basis for awarding moral damages was that "[i]n *Asariotis* 2013-UNAT-309, the Appeals Tribunal *inter alia* held that a fundamental breach of a staff member's rights sufficed to justify an award of moral damages without further proof of harm".⁹

14. In making the award, the UNDT ignored subsequent legislation and Appeals Tribunal jurisprudence.

15. In 2014, Article 10(5) of the UNDT Statute, which is the statutory law governing an award of compensation, was amended by General Assembly resolution 69/203. Article 10(5) now provides, in relevant part, that the Dispute Tribunal may award compensation for harm if such harm is "supported by evidence".

⁹ *Ibid.*, para. 47.

16. Article 10(5) (b), as amended, is in these terms:

As part of its judgement, the Dispute Tribunal may only order one or both of the following:

(...)

(b) Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation for harm, supported by evidence, and shall provide the reasons for that decision.

17. Following the amendment, the majority of the Appeals Tribunal in *Kallon*, a decision which is binding on the UNDT, defined the law on compensation for harm as being that “a staff member’s testimony alone is not sufficient to present evidence supporting harm under Article (...) 10(5) (b) of the UNDT Statute”.¹⁰ Therefore, the testimony of an applicant in such circumstances needs the corroboration of independent evidence to support the contention that harm has occurred.

18. It is therefore incumbent on a claimant to submit specific evidence to sustain an award of moral damages. This is the current law on compensation for harm and it is the law which the UNDT must apply when it is contemplating such a finding.

19. In the present case, there was no evidence to support a claim for moral damages apart from Ms. Rehman’s own claims. The UNDT therefore had no jurisdiction to award her moral damages.

20. However, the Secretary-General did not appeal the UNDT Judgment and so did not invoke the jurisdiction of the Appeals Tribunal under Article 2(1) of the Appeals Tribunal Statute. The award of moral damages will therefore be allowed to stand.

21. There is no corroborating evidence to support her claims for damages, namely, USD 15,000 for violation of her legal rights, an increase in moral damages to USD 250,000 together with two-years’ net base salary to “restore her professional, physical and emotional suffering”, and USD 30,000 as compensation for “irregularities and ignorance” of her request for management evaluation which violated her “due legal rights” and “enhanced stress, anxiety and depression for her and her family”. Accordingly, in accordance with the law we have mentioned above, her appeal cannot succeed on those claims.

¹⁰ *Kallon v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-742, Concurring Opinion by Judge Knierim, para. 2.

22. Ms. Rehman also alleges in her appeal that the UNDT erred in failing to consider that the delay by OIAI in notifying her of the outcome of her complaints had prevented her from pursuing her “proper legal right” to bring a defamation suit in the national courts of Pakistan. She claims compensation in the amount of USD 500,000.

23. The Secretary-General argues that Ms. Rehman’s claim in this regard is not within the jurisdiction of either the UNDT or the Appeals Tribunal and does not constitute an appealable administrative decision. Citing Article 2(1)(a) of the UNDT Statute, which confers jurisdiction upon the UNDT to hear and pass judgment on an application “[t]o appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment”, the Secretary-General submits that Ms. Rehman does not have a “right” under the terms and conditions of her employment to bring a cause of action in the national courts of Pakistan.

24. The Secretary-General has misinterpreted Ms. Rehman’s claim. The administrative decision contested by Ms. Rehman is the decision of the Secretary-General to allegedly intentionally delay notifying her of the outcome of her complaints. Her resulting inability to bring a suit in the national courts of Pakistan does not go to the legality of the appeal but is a question of compensation.

25. However, there is no legal basis on which compensation can be awarded for this claim, since Ms. Rehman has not produced any supporting evidence. Article 10(5)(b) does not provide for compensation merely because there has been a procedural breach or delay. As we have stated above, Article 10(5)(b) of the UNDT Statute only permits an award of compensation for harm when supported by evidence.

26. Moreover, the UNDT was correct in rejecting her remaining claim for compensation for being the subject of an investigation into allegations of fraud. The UNDT found that she failed to produce any evidence of how this affected her reputation or career, or caused symptoms of anxiety or depression.

27. We have noted her submissions challenging the UNDT finding, but submissions are not evidence. Ms. Rehman’s appeal fails to point to any relevant evidence which the UNDT overlooked in coming to its decision. It is clear from the UNDT Judgment that none of the evidence before it was capable of supporting her claim for compensation for being the subject of an investigation

into allegations of fraud. We therefore find that she has not established any justification for the Appeals Tribunal's interference with the UNDT decision.

28. Lastly, Ms. Rehman requests a referral for accountability pursuant to Article 9(5) of the Appeals Tribunal Statute in respect of "staff members involved in unlawful, unjust, tainted and biased decision [sic] who are still on the OIAI, UNICEF payroll (...)". The UNDT has remanded her case to the Director, OIAO, UNICEF "for a new, thorough, proper, comprehensive and reasoned examination" of her complaints.¹¹ We therefore rule that a referral for accountability is not appropriate, at least at this stage.

29. It follows from our findings above that the appeal must fail.

¹¹ Impugned Judgment, para. 50.

Judgment

30. The appeal is dismissed and Judgment No. UNDT/2018/039/Corr. 1 is affirmed.

Original and Authoritative Version: English

Dated this 26th day of October 2018 in New York, United States.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Knierim

(Signed)

Judge Halfeld

Entered in the Register on this 20th day of December 2018 in New York, United States.

(Signed)

Weicheng Lin, Registrar