



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2011/078

Judgment No.: UNDT/2012/047

Date: 13 April 2012

English

Original: French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: René M. Vargas M.

KAMANOU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant contests the decision of 22 July 2010 by which her Second Reporting Officer made the Applicant's request for annual leave conditional upon approval by her First Reporting Officer.

2. She asks that the Tribunal declare this decision to be part of a common course of conduct of abuse of authority and discrimination against her and that it order the Respondent to pay her the equivalent of one year's net base salary as compensation for moral and physical damages she suffered as a result of the decision.

Facts

3. The Applicant entered the service of the United Nations on 11 December 1989 at the P-2 level with a short-term contract in the Department of Economic and Social Affairs ("DESA"). On 1 April 1995, she received a permanent appointment, and in 1997, she was promoted to a P-3 post as a statistician in the United Nations Statistics Division, within DESA.

4. On 7 June 2010, staff members of the Statistics Division were asked to submit, no later than 11 June 2010, their annual leave requests for July and August of that year.

5. On 21 July 2010, the Applicant advised colleagues in her Service that she would take annual leave from 27 July to 6 August 2010 and from 16 August to 17 September 2010.

6. By email dated 22 July 2010, the Applicant's Second Reporting Officer informed her that since she had not given five working days' notice of her annual leave, she should discuss her work assignments with her First Reporting Officer before her annual leave request was approved.

7. On 28 July 2010, the Applicant made a change to her annual leave request, requesting leave from 2 to 6 August. This request was approved the same day.

8. On 30 July 2010, her First Reporting Officer approved her leave from 16 August to 17 September 2010, on the condition that she submit certain preparatory documents before taking the leave.
9. By letter dated 3 August 2010, the Applicant requested a management evaluation of the decision of 22 July 2010.
10. By email dated 6 August 2010, the Applicant's Second Reporting Officer approved her annual leave from 16 August to 17 September 2010, authorizing her to submit upon her return the documents her First Reporting Officer had requested.
11. On 10 May 2011, the request for management evaluation was rejected as irreceivable, since the Applicant's annual leave request had been granted.
12. Following an extension of the relevant deadline, the present application was received by the New York Registry on 25 August 2011.
13. On 26 September 2011, the Respondent filed his reply and requested that costs be awarded against the Applicant.
14. By Order No. 263 (NY/2011) dated 8 November 2011, the judge hearing the case at the New York Registry ordered that it be transferred to the Geneva Registry.
15. On 3 April 2012, the Tribunal held a hearing on the present case, in which the Applicant and Counsel for the Respondent participated via videoconference.

Parties' submissions

16. The Applicant's contentions are:
 - a. Staff Regulation 5.1 places no conditions on annual leave granted to a staff member, including any related to work completed, performance or performance evaluation;

b. The Second Reporting Officer's request to meet with her prior to granting her annual leave is improper and amounts to harassment.

17. The Respondent's contentions are:

a. The application is moot, since the Applicant was granted the annual leave sought;

b. The contested decision was lawfully taken. It does not constitute abuse of authority. The Applicant has failed to establish that the decision being challenged was flawed owing to wrongful considerations;

c. The application constitutes an abuse of procedure for which costs should be awarded against the Applicant.

Consideration

18. The case materials indicate that on 25 August 2011, when the present application was filed with the Tribunal Registry, the Applicant had already been granted the annual leave sought. She therefore no longer has any reason to appeal before the Tribunal a decision placing conditions on or refusing this annual leave, since, moreover, she had suffered no prejudice owing to this decision (see *Calvani* UNDT/2010/027, *Osman* UNDT/2010/158, *Tranchant* UNDT/2011/065, *Price* UNDT/2011/095).

19. As a consequence, the application can only be rejected as irreceivable.

20. While the Respondent requested that the Tribunal apply article 10.6 of its Statute, which allows it to award costs against a party, the Tribunal holds that all that is called for in this case is to strongly caution the Applicant to appeal before the Tribunal in future only those decisions that might result in prejudice to her.

Conclusion

21. In view of the foregoing, the Tribunal DECIDES:

The application is rejected, as is the Respondent's request to award costs against the Applicant.

(Signed)

Judge Jean-François Cousin

Dated this 13th day of April 2012

Entered in the Register on this 13th day of April 2012

(Signed)

René M. Vargas M., Registrar, Geneva