



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2011/088

Judgment No.: UNDT/2012/085

Date: 4 June 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. By application registered on 15 December 2011, the Applicant, a staff member in the Department of Economic and Social Affairs (“DESA”), contests the decision to impose on her a written censure and the implicit decision to place her on administrative leave since June 2011.

2. She requests the Tribunal to order that she be protected and redeployed out of DESA, and that an investigation be conducted to establish that she was coerced to work on outside activities and to work for the Economic Community of West African States (“ECOWAS”) in particular. She also requests the Tribunal to order the Respondent to pay her monetary compensation for the moral and material damage that she suffered.

3. The Respondent requests the Tribunal to award costs against the Applicant for abuse of proceedings.

Facts

4. The Applicant entered the service of the United Nations on 11 December 1989 at the P-2 level on a short-term appointment in DESA. On 1 April 1995, she was granted a permanent appointment and in 1997, she was promoted to the P-3 level as a statistician in the Statistics Division of DESA.

5. Between 2003 and the first half of 2006, the Applicant participated in the drafting of a study entitled *ECOWAS Poverty Profile*. ECOWAS published the study in November 2007 and acknowledged the collaboration of the Statistics Division in its publication. The preface of the document credited the primary authors of the study, including some Statistics Division staff members, but did not mention the Applicant.

6. In 2009, the Applicant filed an appeal with the New York Joint Appeals Board against the decision not to recognize her contributions to the drafting of the above-mentioned study. Following the transfer of the case to the Tribunal, one

judgment was issued in May 2010 (*Kamanou* UNDT/2010/093), and a second in May 2012 (*Kamanou* UNDT/2012/064), both dismissing the appeal.

7. On 22 September 2010, the Applicant filed a complaint with a New York State court, alleging that ECOWAS had unlawfully claimed copyright of the study entitled *ECOWAS Poverty Profile*, that she was the author of the study and that she should be granted exclusive rights to it. She demanded compensation and punitive damages totalling US\$4 million.

8. On 31 May 2011, after seven months' sick leave, the Medical Services Division of the Office of Human Resources Management medically cleared the Applicant to return to work. However, despite repeated requests from the Organization that she return to duty, the Applicant has not done so since 1 June 2011 (see, in that regard, judgment *Kamanou* UNDT/2012/050).

9. By letter dated 4 November 2011, the Assistant Secretary-General for Human Resources Management requested the Applicant to withdraw immediately her complaint against ECOWAS.

10. On 15 December 2011, the Applicant filed the present application, contesting, *inter alia*, the content of the letter dated 4 November 2011.

11. On 18 January 2012, the Respondent submitted his reply.

12. By Order No. 101 (GVA/2012) of 31 May 2012, the Tribunal informed the parties that it would decide on the receivability of the application without a hearing.

13. By email dated 1 June 2012, the Applicant objected to the Tribunal's decision not to hold a hearing and expressed her wish to suspend the proceedings for one month so that she could find a counsel and begin a mediation process.

Parties' submissions

14. The Applicant's contentions are:
 - a. She was denied the right to due process in disciplinary matters. The written censure from the Assistant Secretary-General for Human Resources Management and the implied decision to place her on administrative leave were in non-compliance with staff rule 10.3(a) and administrative instruction ST/AI/371 on disciplinary measures and procedures;
 - b. The decision of the Assistant Secretary-General for Human Resources Management was premised on procedural irregularities and breaches of her terms of employment. She had been coerced by the Organization to engage in unauthorized outside activities;
 - c. The written censure issued by the Assistant Secretary-General for Human Resources Management was discriminatory and not grounded in equity. In particular, it violated her rights under the Universal Declaration of Human Rights;
 - d. The decision by the Assistant Secretary-General for Human Resources Management was based on a narrow interpretation of (i) United Nations policies, particularly with regard to outside activities; (ii) the immunity of the Organization; and (iii) international treaties governing intellectual property.
15. The Respondent's contentions are:
 - a. None of the contested decisions were taken. The Administration did not issue a written censure to the Applicant, nor did it place her on administrative leave since June 2011. The letter of 4 November 2011 merely requested that the Applicant withdraw her complaint against ECOWAS;

b. The application is not receivable because the Applicant did not request a management evaluation of the contested decisions. The Applicant claims that the contested decisions are exempt from management evaluation pursuant to staff rule 10.3(c), which stipulates that “[a] staff member against whom disciplinary or non-disciplinary measures, pursuant to staff rule 10.2, have been imposed following the completion of a disciplinary process may submit an application challenging the imposition of such measures directly to the United Nations Dispute Tribunal”. However, that provision is not applicable in the present case because the Applicant was not the subject of any of the disciplinary measures provided for in staff rule 10.2;

c. Moreover, the letter of 4 November 2011 merely conveyed to the Applicant the Organization’s position with respect to her claim against ECOWAS. It did not produce any direct legal consequence to the legal order of the Applicant as a staff member and was therefore not an administrative decision that could be appealed within the meaning of article 2.1(a) of the Tribunal’s Statute;

d. On the merits, the Applicant had only limited involvement in the drafting of the *ECOWAS Poverty Profile*, as part of her official duties in the Organization;

e. The lawsuit filed by the Applicant against ECOWAS is contrary to staff rule 1.9, which stipulates that “[a]ll rights, including title, copyright and patent rights, in any work performed by a staff member as part of his or her official duties, shall be vested in the United Nations”, as well as staff regulation 1.1(f) concerning the obligations of staff members with respect to the Organization’s privileges and immunities, and staff rule 1.2(s) concerning outside employment and activities. The letter of 4 November 2011 reminded her of these obligations and rightly requested her to withdraw her complaint.

Consideration

16. The Applicant objected to the Tribunal's decision not to hold a hearing. However, the Tribunal informed her that it must first rule on the receivability of the application and, in light of the case file, it considered that it had sufficient information to do so.

17. While the Applicant also requested the Tribunal to suspend proceedings to allow her to seek counsel and begin a mediation process, the Tribunal finds it necessary, for the proper administration of justice, to rule on the receivability of the application without delay.

18. The Applicant contests the decision to issue a written censure, allegedly from the Assistant Secretary-General for Human Resources Management, by letter dated 4 November 2011, as well as the implied decision to place her on administrative leave since June 2011.

19. The facts of the case show that none of the contested decisions were taken. The letter of 4 November 2011 simply requested that the Applicant withdraw her complaint against ECOWAS and can by no means be interpreted as a written censure within the meaning of staff rule 10.2(a)(i). Furthermore, there was no decision, implied or otherwise, to place the Applicant on administrative leave as of June 2011 within the meaning of staff rule 10.2(b)(iii). In fact, it is the Applicant who, since 1 June 2011, has refused to return to duty despite several requests from the Administration (see *Kamanou* UNDT/2012/050).

20. Thus, in the present application, the Applicant is not contesting an administrative decision within the meaning of article 2.1(a) of the Statute of the Tribunal.

21. Even assuming that the Applicant intended to contest the letter of 4 November 2011 requesting her to withdraw her complaint against ECOWAS, and that that request could be considered an administrative decision affecting her conditions or terms of employment and thereby appealable, no management evaluation of this decision was requested.

22. Article 8.1 of the Statute of the Tribunal provides that:

An application shall be receivable if: ... (c) An applicant has previously submitted the contested administrative decision for management evaluation, where required ...

23. Furthermore, staff rule 11.2(c) states that:

A request for management evaluation shall not be receivable by the Secretary-General unless it is sent within sixty calendar days from the date the staff member received notification of the contested administrative decision ...

24. It is also established jurisprudence that for an application to be receivable, the applicant must have previously submitted the contested decision for management evaluation (see, for example United Nations Appeals Tribunal judgments *Crichlow* 2010-UNAT-035, *Planas* 2010-UNAT-049, *Syed* 2010-UNAT-061, and *Jennings* 2011-UNAT-184).

25. Thus, in any event, the application is not receivable and must be dismissed.

26. While the Respondent requested the Tribunal to apply article 10.6 of its Statute, which allows it to award costs against a party, the Tribunal considers that in the present case there is no need to do so.

Conclusion

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

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

(Signed)

Judge Jean-François Cousin

Dated this 4th day of June 2012

Entered in the Register on this 4th day of June 2012

(Signed)

René M. Vargas M., Registrar, Geneva