



Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

GEBREMARIAM

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT ON LIABILITY
AND RELIEF**

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Sibangilizwe Ndlovu, OES/ECA

Sandra Baffoe-Bonnie, OES/ECA

Introduction

1. The Applicant began his career with the United Nations at the Economic Commission for Africa (ECA) in Addis Ababa, Ethiopia, in 1990. Currently, he is working at ECA as a Library Clerk at the G4 level under a permanent appointment.

2. On 18 April 2013, he filed an Application with the Dispute Tribunal contesting a decision taken by Hazel Scott, Director, Division of Administrative Services, ECA, to issue him with a written reprimand on 6 February 2013 because he had failed to attend a meeting in relation to his formal challenge of an administrative decision.

3. The Respondent filed a Reply to the Application on 30 April 2013.

Facts

4. On 4 February 2013, the Applicant filed a management evaluation request concerning delays in granting his annual within-grade increment for the year 2013. He copied Ms. Scott on his complaint.

5. In the afternoon of the same day, 4 February 2013, Ms. Scott informed the Applicant that she intended to schedule a meeting between them and a Human Resources Officer to discuss his complaint.

6. In the late afternoon on 4 February 2013, Ms. Deborah Abebe, Ms. Scott's Assistant, informed the Applicant that Ms. Scott would like to meet with him on 5 February 2013.

7. The Applicant asked Ms. Scott's Assistant to reschedule the meeting because his colleague was on leave and he could not leave his desk unattended.

8. On 5 February 2013, Ms. Scott held a meeting expecting the Applicant to attend. When the Applicant did not appear at the meeting, his supervisors instructed him to attend.

9. On 5 February 2013, during a phone conversation with Ms. Scott's Assistant, the Applicant explained that he was not feeling sufficiently composed to discuss the matter with the Administration in a rational manner. He did not attend the meeting.

10. On 6 February 2013, Ms. Scott issued an interoffice memorandum entitled "Reprimand for Misconduct". In the memorandum, Ms. Scott informed the Applicant, *inter alia*, as follows,

[Applicant's] behavior of gross insubordination and disrespect to constituted authority amounts to misconduct for which you are hereby issued this letter of reprimand in line with Staff Rules 10.2 (b)(i). The Chief, HRSS is hereby advised to keep a copy of this letter of reprimand in your file. Please be informed that a repeat of this or similar behavior shall result in sterner actions against you.

11. In an email dated 7 February 2013, the Applicant protested against Ms. Scott's actions and, on 22 February 2013, he filed a management evaluation request of the decision to issue a reprimand.

12. On 16 April 2013, the Applicant received a letter from Ms. Scott in which she informed him that she had rescinded the reprimand and had decided to give him the opportunity to respond or comment on the circumstances surrounding his refusal to attend the meeting to which she had invited him on 5 February 2013.

13. On 18 April 2013, the Applicant filed the present Application with the Dispute Tribunal contesting Ms. Scott's decision to issue him with the written reprimand of 6 February 2013.

14. On 23 April 2013, the Management Evaluation Unit issued a letter informing the Applicant that his request was moot because the reprimand had been rescinded.

15. On 24 April 2013, the Applicant filed a management evaluation request of what he described as the decision to initiate a disciplinary process on the basis of allegations that have already given rise to a reprimand which was ultimately rescinded. On 26 April 2013, he filed an application for Suspension of Action.

16. On 6 May 2013, the Tribunal granted the Suspension of Action under art. 13 of its Rules of Procedure pending a second management evaluation request filed by the Applicant on 24 April 2013.

17. The Tribunal heard the Application on 18 November 2014.

Applicant's submissions

18. The Applicant's case is summarized below:

a. The decision to issue him with a written reprimand was unlawful and unjust in that it was not based on established facts.

b. The alleged facts did not qualify as misconduct, and the sanction was disproportionate to the alleged offence.

c. The reprimand was not only unfounded but was also imposed in breach of his due process rights.

d. The reprimand was a disguised disciplinary measure. The Administration cannot be allowed to sanction staff members for alleged misconduct by imposing non-disciplinary measures in order to circumvent the procedural guarantees contained in the Staff Regulations and Rules and in various Administrative Instructions. By doing so, the Administration attempted to deprive him of procedural and due process rights.

e. The reprimand placed in his personnel records constitutes adverse material. It characterizes his attempt to reschedule a meeting as "behavior of gross insubordination and disrespect to constituted authority" and affects his reputation.

f. Ms. Scott's letter of 16 April 2013 rescinding the reprimand constituted an abuse of authority. Ms. Scott appeared to suggest that by rescinding the reprimand, she was doing the Applicant a favour. She failed to

acknowledge that she unlawfully instructed that the reprimand be placed in the Applicant's file.

g. The Administration completely failed to acknowledge the moral and psychological harm as well as the reputational damage caused to the Applicant by this unlawful reprimand.

h. Rescinding the reprimand is entirely inadequate reparation of the harm that has already been caused. The Applicant was publicly humiliated and put through an enormous amount of stress.

i. The Administration cannot simply rescind the reprimand and pretend that no harm was caused. It owes monetary reparation in respect of moral and reputational damage.

19. For these reasons, the Applicant requests compensation of four months' net base salary. The Applicant submits that unlawfully placing a reprimand in a staff member's personnel record warrants monetary compensation for moral injury of three or four months' net base salary. In support of this claim he cites *Eldan*¹ and *Johnson*².

Respondent's submissions

20. The Respondent's case may be summarized as follows:

a. The Applicant's claim for moral damages is based on the assumption that the reprimand issued (and now rescinded) on 6 February 2013 was a disciplinary measure imposed without basis and without affording him due process.

b. The Respondent concedes that the Applicant should have been afforded the opportunity to present his explanation for his conduct in not

¹ UNDT/2010/133, para. 57.

² UNDT/2011/124, para. 73.

attending the meeting of 5 February 2013 but no further due process requirements have been breached.

c. The Staff Rules are clear that a reprimand does not amount to a disciplinary measure. The imposition of a reprimand is an administrative measure and the requirements of due process as set out in ST/AI/371 (Revised disciplinary measures) do not apply.

d. In the present case, the failure by the Administration to afford the Applicant due process in the way of a chance to respond to the allegation of insubordination is the only due process right of the Applicant which has been breached and remedied.

e. Having accepted that the Applicant was not afforded the opportunity to be heard, the 6 February 2013 reprimand having been rescinded and all reference to it having been removed from the Applicant's Official Status File, the Respondent can be said to have corrected his errors.

f. The only claim to damages possible in this case is of moral damage since there is no economic loss arising out of the imposition and subsequent rescission of a reprimand.

g. In the present case there is no evidence of moral injury before the Tribunal. Any moral damage is *de minimis*.

Considerations

21. The legal issue arising for determination in this case is whether the Applicant is entitled to compensation for moral damages as a result of the issuance of the 6 February 2013 reprimand which was subsequently rescinded and all reference to it removed from the Applicant's Official Status File.

22. The need for compensation must be demonstrated by evidence of damages or injuries³. The grounds that support an award for moral damages include delay, frustration, distress and anxiety⁴. Damages for moral injury may arise from a breach of the staff member's substantive entitlements arising from his or her contract of employment and/or from a breach of the procedural due process entitlements therein guaranteed or where there is evidence produced of harm, stress or anxiety caused to the staff member which can be directly linked or reasonably attributed to a breach of his or her substantive or procedural rights⁵.

23. In the present case, other than to state that he has suffered moral and reputational damage, the Applicant has failed to adduce any evidence to demonstrate any harm he has suffered which can be directly linked to the rescinded reprimand. He alleges that he was publicly humiliated and put through an "enormous amount of stress" without providing particulars of the same.

24. Given the circumstances of the present case and the entire documentary record, the Tribunal finds that the timely rescission of the reprimand and its removal from the Applicant's Official Status file was adequate restitution.

Judgment

25. This Application has no merit and is dismissed in its entirety.

(Signed)

Judge Nkemdilim Izuako

Dated this 20th day of November 2014

³ *James* 2010-UNAT-009, at para. 46.

⁴ *Appleton* 2013-UNAT-347 at para. 33.

⁵ *Asariotis* 2013-UNAT-309, at para. 36.

Entered in the Register on this 20th day of November 2014

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi