



Before: Judge Francesco Buffa

Registry: Geneva

Registrar: René M. Vargas M.

AWE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Miryoungh An, AAS/ALD/OHRM, UN Secretariat

Mathias Schuster, AAS/ALD/OHRM, UN Secretariat

Introduction

1. The Applicant, a Chief Resident Auditor in the Office of Internal Oversight Services in the United Nations Assistance Mission for Iraq (“UNAMI”), contests the decision to close his complaint pursuant to ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) against Ms. Yasin, then Chief of Mission Support, UNAMI. The Applicant requests an order instructing that offending statements made about the Applicant by Ms. Yasin are removed from official records. The Applicant further requests compensation amounting to two years’ salary for moral damages and damages for procedural delay.

Background

2. The Applicant joined UNAMI as Chief Resident Auditor in the Office of Internal Oversight Services (“OIOS”) on 10 November 2012. On 19 November 2012, the Applicant was relocated from Baghdad, Iraq to Kuwait, as a result of a decision to move the audit team to Kuwait.

3. On 20 January 2014, Ms. Yasin, Chief of Mission Support, refused to authorize the Applicant’s Movement of Personnel (“MOP”) for travel to Baghdad on an official mission. Subsequently, at the Senior Management Team Meeting (“SMTM”) of 22 January 2014, Ms. Yasin and Mr. M. R., the Chief of Staff made statements about the Applicant which the Applicant submitted were false, defamatory, and were prejudicial. Minutes of the meeting were circulated to about 25 staff members.

Investigations by a fact-finding panel

4. On 3 March 2014, the Applicant filed a complaint of harassment and abuse of authority pursuant to ST/SGB/2008/5 against Mr. M. R. and Ms. Yasin.

5. On 15 June 2014, the former Special Representative of the Secretary-General for Iraq (“SRSG/Iraq”) convened a fact-finding panel (“FFP”) to investigate the Applicant’s allegations.

6. With respect to the Applicant’s complaint, after conducting interviews of 14 witnesses and documentary reviews, the FFP produced a fact-finding report, dated 18 February 2015, and an addendum report dated 24 March 2015, in accordance with the provisions of ST/SGB/2008/5.

7. With respect to the Applicant’s complaint, the fact-finding report and the addendum report set out the FFP’s findings that, while Ms. Yasin was serving as Chief of Mission Support at UNAMI, she harassed, and abused her authority towards, the Applicant by interfering with his official travel in January 2014, and by making unsubstantiated, ill-motivated and derogatory remarks against him in an SMTM, and permitting the minutes of the SMTM which recorded the remarks to be circulated among senior staff members.

8. The FFP’s report also indicated that during the course of the investigation

delays were incurred as a result of the formal commencement of the proceedings on 14 September 2014 [...]; the very short period of time [...] allocated by UNAMI for the conduct of two (2) sensitive and/or complex investigations in situ in Kuwait; the number of statements (fifty-one in total) issued by the Panel and subsequently amended thorough [...] e-mail exchanges with the concerned parties; at times, the late response provided by the parties and witnesses to the invitation to attend an interview and/or to review their draft statements; the careful review of the abundant documentation submitted in the proceedings; and the critical obligations and high responsibilities concomitantly assumed by the Panel members, who are serving in volatile peacekeeping missions [...].

9. By a memorandum dated 23 April 2015 and sent on 21 May 2015, the SRSG/Iraq advised the Applicant of his decision to close the matter with managerial action in the case of Mr. M. R., in light of the findings of the FFP. With regard to Ms. Yasin, the SRSG/Iraq advised that, as Ms. Yasin had returned to the United Nations

Headquarters and thus was no longer a UNAMI staff member, he had referred the matter to the Under-Secretary-General for Field Support (“USG/DFS”) for appropriate action.

10. By memorandum dated 23 April 2015, UNAMI referred the FFP’s report and the addendum report above mentioned to the USG/DFS. By memorandum dated 9 June 2015, the USG/DFS referred the matter to the then Under-Secretary-General for Peacekeeping Operations (“USG/DPKO”) as Ms. Yasin was working as Senior Administrative Officer at the Department of Peacekeeping Operations.

Procedure following the referral of the case of Ms. Yasin

11. In February 2016, the USG/DPKO referred the findings of the FFP against Ms. Yasin to the Assistant Secretary-General for Human Resources Management (“ASG/OHRM”).

12. On 17 January 2017, the ASG/OHRM sent a letter to Ms. Yasin notifying her that, following the investigation into the harassment allegations that the Chief Resident Auditor had lodged against her, she had decided to drop the charge that she had made derogatory comments about the Chief Resident Auditor and his purpose of travel at the SMTM for “insufficient evidence”. However, her actions in respect of the Chief Resident Auditor’s travel request exhibited shortcomings in communication skills. Consequently, the ASG/OHRM decided to close the matter but she also decided to issue Ms. Yasin a letter of written reprimand as an administrative measure to be placed in her official status file.

13. On 20 March 2017, Ms. Yasin challenged the decision to impose administrative measures on her before the Dispute Tribunal (Case No. UNDT/NY/2017/21). In this case, the Dispute Tribunal found that Ms. Yasin’s actions forming the basis of the contested decision to issue her a letter of reprimand “were reasonable and in accordance with her obligation to carefully verify the cost of administrative services, procurement and logistical support, since all the costs were supported by UNAMI, in order to ensure that all the provisions of the OIOS Audit Manual were respected”,

and those actions were taken “within the margins of her role and responsibilities”. The Dispute Tribunal noted that Ms. Yasin’s actions did not cause any delay of the Applicant’s travel to UNAMI. Applying Section 1.2 of ST/SGB/2008/5 to the case, the Dispute Tribunal considered that the different views that Ms. Yasin and the Applicant held about the audit field work reflected disagreement on work performance and they were not harassment. The Dispute Tribunal consequently considered the decision to reprimand Ms. Yasin as “not being justified” and ordered its rescission (see *Yasin* UNDT/2018/087, upheld by the Appeals Tribunal in *Yasin* 2019-UNAT-915).

The Applicant’s previous appeals to the Dispute Tribunal and their outcome

14. On 1 December 2015, the Applicant filed an application to the United Nations Dispute Tribunal contesting the decision to reprimand Mr. M. R. (Case No. UNDT/NBI/2015/177). On 7 December 2015, the Applicant also filed an application to the Dispute Tribunal contesting the Administration’s action concerning his complaint against Ms. Yasin (Case No. UNDT/NBI/2015/179).

15. Given that the two cases shared the same factual background and the same FFP interviewed the witnesses and produced a common report, by Order No. 435 (NBI/2016), dated 19 September 2016, the Dispute Tribunal ordered to combine the two proceedings.

16. By Order No. 479 (NBI/2016), dated 10 November 2016, the Dispute Tribunal discharged the order for combined proceedings and by Judgment *Awe* UNDT/2016/207 dated 18 November 2016, the Dispute Tribunal dismissed the application under Case No. UNDT/NBI/2015/179 as no final administrative decision had been taken in relation to the complaint against Ms. Yasin. This judgment was not appealed.

17. With respect to the application under Case No. UNDT/NBI/2015/177, the Dispute Tribunal issued Judgment *Awe* UNDT/2016/206 dated 18 November 2016, in which it ordered the Respondent to:

- a) Remove forthwith from the records any and all of the offending references in the minutes of the [SMTM] on 22 January 2014 and to send written confirmation to all recipients of the minutes to inform them of the findings of the Fact Finding Panel that there was no basis to support the damaging comments made against the Applicant.
- b) Pay to the Applicant the sum of USD3,000 for procedural error.
- c) Pay to the Applicant the sum of USD15,000 for harm suffered.

18. On 17 January 2017, the Respondent appealed Judgment *Awe* UNDT/2016/206.

19. On 14 July 2017, the Appeals Tribunal partially vacated Judgment *Awe* UNDT/2016/206 by vacating the compensation for procedural error and reducing the amount of the compensation to USD5,000. The Appeals Tribunal affirmed the Dispute Tribunal's order to remove from the records the offending references, and to send written confirmation to inform all recipients of the minutes of the findings of the FFP.

Procedural history

20. On 14 July 2017, the Applicant filed his application in the Nairobi Registry and the case was initially assigned to Judge Agnieszka Klonowiecka-Milart.

21. On 16 August 2017, the Respondent filed his reply.

22. On 3 November 2017, in separate proceedings, the Applicant applied before the Appeals Tribunal for Interpretation of judgment *Awe* 2017-UNAT-774.

23. On 25 May 2018, the Respondent filed a submission of additional information relating to the Appeal's Tribunal Judgment *Awe* 2018-UNAT-827 on the Applicant's application for interpretation of *Awe* 2017-UNAT-774. The Respondent submitted that the Appeals Tribunal clarified in *Awe* 2018-UNAT-827 that its judgment in *Awe* 2017-UNAT-774 "finally settles [the Applicant's] claims for compensation for loss of reputation and professional standing with regard to the 22 January 2014 meeting and its minutes including actions and wrongdoings by Ms. Yasin".

24. On 19 March 2019, the case was transferred to the Geneva Registry, and was reassigned to Judge Teresa Bravo.

25. On 12 July 2019, the Applicant filed a submission of additional information regarding the Appeal's Tribunal Judgment *Yasin* 2019-UNAT-915 concerning the disciplinary case against Ms. Yasin. On 23 July 2019, the Respondent replied submitting that this Judgment does not support the Applicant's request for relief in the present application before the Dispute Tribunal because it is not relevant to the determination of any harm that the Applicant could have suffered in addition to what has already been addressed in Judgments *Awe* UNDT/2016/206 and *Awe* 2017-UNAT-774.

26. By Order No. 121 (GVA/2019) dated 20 December 2019, the Tribunal informed the parties that the case had been reassigned to the undersigned Judge and that the matter could be determined without holding a hearing.

27. The parties agreed with a judgment being rendered on the papers and by the end of January 2020 they filed their closing submissions.

Consideration

28. In his application, the Applicant claimed that his rights to due process were violated on four grounds. First, that the Administration erred by failing to grant the Applicant any compensation for the damage caused to him as a result of the comments made against him by Ms. Yasin. Second, that the Applicant suffered moral

harm due to the Administration's delay in concluding the Applicant's complaint. Third, the Administration's failure to promptly retract the 22 January 2014 SMTM minutes. Forth, the Applicant suffered harm to his dignity and reputation as a result of the actions of Ms. Yasin and the subsequent handling of his complaint by the Administration.

29. The Respondent replies that the application should be dismissed as the Applicant has failed to demonstrate that he suffered any harm in addition to what has already been adequately addressed by the Tribunals in *Awe* UNDT/2016/206, *Awe* 2017-UNAT-774 and *Awe* 2018-UNAT-827, which concerns the same factual background and the same investigation as in the present case.

30. Having reviewed the record, the Tribunal finds it clear that the Applicant seeks review of matters which have all been comprehensively addressed by the Dispute Tribunal and the Appeals Tribunal. In particular, the Tribunal notes that the Appeals Tribunal in *Awe* 2017-UNAT-774 partially upheld an award of compensation granted to the Applicant by the Dispute Tribunal in Judgment *Awe* UNDT/2016/206 for the harm he allegedly suffered with respect to his complaint against Ms. Yasin under ST/SGB/2008/5. Specifically, the Dispute Tribunal awarded the Applicant compensation for derogatory remarks made at the 22 January 2014 SMTM and the alleged delays in handling his complaint.

31. In *Awe* 2017-UNAT-774, the Appeals Tribunal recognized the harm suffered by the Applicant resulting from the "unsubstantiated and derogatory remarks against [the Applicant]" during an SMTM, the circulation of the SMTM minutes including such remarks, and the "failure to provide prompt and effective redress". The Appeals Tribunal further recognized that such harm was of a temporary nature, which would not affect the totality of the Applicant's career and reduced the amount of compensation granted to the Applicant by the Dispute Tribunal to USD5,000.

32. The Appeals Tribunal further affirmed the Dispute Tribunal's order to the Respondent to remove the offending references from the records and to send written confirmation to all recipient of the minutes to inform them of the findings of the FFP. It follows that the Applicant's request to have the offending statements in the SMTM removed from official records and to inform the attendees of the meeting has already been addressed by the Dispute Tribunal.

33. In his closing submission dated 29 January 2020, the Applicant accepts that in light of the Appeals Tribunal findings in *Awe* 2017-UNAT-774, he is not entitled to a claim for additional moral damages, and that his demands for retraction of the minutes of the 22 January 2014 SMTM as well as the notification of all recipients of the minutes have been satisfied and therefore are moot. The Applicant consequently withdraws his claim for additional moral damages and his request for an order in relation to the minutes of the SMTM.

34. The Applicant further submits that notwithstanding the withdrawal of the above-mentioned claims in his application, he is entitled to a fair and transparent process and therefore reserves the right to ask the Tribunal to assess whether or not his complaint was appropriately dealt. The Applicant submits that “[this] is as far as his application goes”.

35. The Applicant contends that he has neither been provided with a transparent process nor with a prompt and efficient means of redress. In support of his claim, the Applicant submits that the obsolescence of the device used by the FFP “became an issue”, as recalled in footnote 4 of the Appeals Tribunal's Judgment *Yasin* 2019-UNAT-915, which reads in its relevant part that “[t]he interviews were tape recorded. However, the secretary of the FFP subsequently was unable to operate those tapes because she could not find a compatible device to play and listen to the interview statements recorded”.

36. The Applicant therefore argues that his complaint was compromised as a result of this “issue” as the Respondent claims that certain conclusions could not be reached on statements that had been recorded due to the negligence of its appointed FFP in using a device that was obsolete. The Applicant submits that this is a procedural error for which his complaint was prejudiced.

37. The Applicant next raises an alleged discrepancy between the ASG/OHRM letter of 17 January 2017 and the report of the FFP in as far as the Respondent’s failure to conclude that the allegation of making derogatory comments had been established against Ms. Yasin. The Applicant argues that

[i]n the ASG OHRM, letter of 17 January 2017, the Respondent was curiously silent on this issue[,] which was subsequently articulated in the MEU letter of 6 June 2017 and in the Respondent’s [Reply] ... where it indicated that “the MEU noted that allegations regarding derogatory remarks were not established in relation to Ms. Yasin”.

38. The Applicant submits that there is evidently a lack of transparency on this issue and that his request for more information and adjudication by the UNDT is justified.

39. The Tribunal notes that these claims were filed on 29 January 2020 in the Applicant’s closing submissions and that none of them was mentioned in the application lodged with the Tribunal on 14 July 2017. The Tribunal recalls that in the application, the grounds for challenging the administrative decision were only those reported supra in para. 28, claims already comprehensively addressed by the Dispute Tribunal and the Appeals Tribunal, as above said. Consequently, also considering that all complaints brought in the application are ill-founded and have been withdrawn, the Tribunal doubts about the receivability of the last-minute claims, which were filed only in the closing submissions.

40. In any case, even assuming that the claims in question—although not explicitly stated by the Applicant (who is self-represented) in his application—were included in the generic complaint related to the violation of the “right to a prompt and efficient internal means of redress”, the Tribunal finds these claims ill-founded.

41. On the one hand, the Tribunal is aware that the Appeals Tribunal stated in *Awe* 2017-UNAT-774 that “there is no provision in the UNDT Statute for an award ‘for procedural error’”, and in *Awe* 2018-UNAT-827 it clarified that the same principle and reasoning “will also apply to the question of whether Mr. Awe can request disciplinary actions against Ms. Yasin or compensation for procedural errors in case such actions have not been taken”.

42. On the other hand, and upstream, the issues raised by the Applicant did not cause procedural errors.

43. It results from Judgment *Yasin* 2019-UNAT-915, that no claim of procedural irregularity has ever been raised with reference to the decision by the Administration to sanction Ms. Yasin (as the decision was challenged by Ms. Yasin, and then rescinded by the Appeals Tribunal, only on a substantive ground).

44. The lack of procedural irregularities in the process in question is to be confirmed in the case at hand, with specific reference to the Applicant’s last claims.

45. As to the issue related to the use of an alleged obsolete recording device, even considering that the recording by the FFP became useless, the Tribunal notes that the Applicant, who bears the burden to prove his allegations, did not demonstrate (and he could have done it by other means) the content of the interviews by the FFP and, therefore, did not show that the “procedural issue” complained of was relevant in concrete in the proceedings towards Ms. Yasin and was able to affect its outcome. Nor did the Applicant show that the failure by the FFP to use up-to-date devices infringed any specific rule or vitiate the proceedings. The Applicant may not be satisfied by the supervened impossibility to use the recordings in question, but he is not entitled to a due process in relation to a specific mean of investigation by the

Administration, given, on the one hand, that at the time the recording was made the devices were efficient and still in use and, on the other hand, that the same facts could have been proved by other means.

46. With reference to the second issue raised by the Applicant in his closing submission (see para. 37 above), the Tribunal finds no discrepancies between the 17 January 2017 letter of the ASG/OHRM and the Respondent's subsequent submissions, nor does it find any lack of transparency in the process concerning the Applicant's claim. The Applicant may not be satisfied by the finding that the allegations regarding derogatory remarks were not established in relation to Ms. Yasin; however, his disappointment does not entitle him to a certain finding against Ms. Yasin. Staff members are, indeed, entitled to a due process in relation to their complaints, not to a particular finding against another staff member or to a particular decision by the Organization towards another staff member.

47. In conclusion, the Tribunal finds that the Applicant's claims have all been comprehensively addressed by the Dispute Tribunal and the Appeals Tribunal, and that the Applicant failed to establish a basis for which further remedies should be granted. The application is rejected in its entirety.

Conclusion

48. In light of the foregoing, the application is dismissed.

(Signed)

Judge Francesco Buffa

Dated this 3rd day of April 2020

Entered in the Register on this 3rd day of April 2020

(Signed)

René M. Vargas M., Registrar, Geneva