



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

CAMMAROTA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Robbie Leighton, OSLA

Counsel for Respondent:

Alan Gutman, AAS/ALD/OHRM, UN Secretariat

Introduction

1. By application filed on 10 August 2018, the Applicant contests the decision of the United Nations Information Centre (“UNIC”) on his “forced removal from his post in Pakistan” and the UNIC’s failure thereafter to clarify his status.

Facts and procedural history

2. The Applicant joined UNIC in Islamabad in August 2013. At the time of the contested decision, he served as a Senior Public Information Officer at the P-5 level.

3. By email of 11 November 2017, the Under Secretary-General (“USG”), Department of Public Information (“DPI”), *inter alia* informed the Applicant that it was “imperative” for him to leave Islamabad by 15 November 2017.

4. On 12 November 2017, the Applicant flew from Geneva, where he was on rest and recuperation (“R&R”), to Islamabad.

5. On 14 November 2017, Temporary Job Opening No. 88234 for the post of Senior Public Information Officer (P-5), UNIC, Islamabad, was advertised.

6. On 16 November 2017, the Applicant flew from Islamabad to Geneva.

7. By Note Verbale dated 16 November 2017, the Executive Officer, DPI, informed the Pakistani Ministry of Foreign Affairs (“MOFA”) that the Applicant had taken up a new assignment within DPI effective immediately.

8. By email of the same day from the Director, Strategic Communications (“SC”), UNIC, the Applicant was informed upon his arrival in Geneva of his temporary assignment as a Senior Public Information Officer (P-5) “until a longer term solution [could] be identified”.

9. By email of 24 November 2017 to the Director, SC, UNIC, the Applicant *inter alia* enquired about a long-term solution to his situation, sharing that he would be happy to stay long term on his temporary posting. The Director replied by email of the same day that “there may be something in the pipeline that could be of interest to all”.

10. During the month of December 2017, the Applicant sent a number of follow-up emails to UNIC Officials requesting for updates on his long-term assignment and payment of his arrears (reimbursement of his business class flight Geneva-Islamabad-Geneva, post adjustment for Geneva whereas he had been paid for that of Islamabad).

11. By email of 29 December 2017, the Chief, Centers Operations Section (“COS”), UNIC, informed the Applicant about his long-term assignment advising him that “a decision would be taken within the next few days” and that it would be communicated to him “very shortly”. The Applicant was also informed that the post adjustment difference would be paid shortly. Regarding the reimbursement for his flight, the Applicant was informed that he would be paid a combination of half business and half economy because the itinerary Geneva-Islamabad did not qualify for business class cabin.

12. By email of 3 January 2018, the Applicant responded to the Chief, COS, UNIC, copying the Executive Officer, DPI, and the Director, SC, UNIC, that he looked “forward to hearing about the long-term assignment and to receiving the post adjustment compensation”. Regarding the flight reimbursement, the Applicant added that the Executive Officer, DPI, had “told [him] over the phone [he] was entitled to business class” and that the said Office had approved the quotation that the Applicant had sent by email before finalizing the purchase of his flight.

13. By email of 3 January 2018, the Executive Officer, DPI, informed the Applicant that the Chief, COS, UNIC, would be contacting him to discuss the issue of his reassignment. The Executive Officer also wrote that although he authorized the Applicant to purchase the air-ticket on business class, “[Travel Processor Office] in New York advised that business class entitlement only applies to the Islamabad-Geneva leg not the Geneva-Islamabad one”.

14. By email exchanges dated 26 January 2018 and 31 January 2018 between Counsel for the Applicant and the Executive Officer, DPI, the parties agreed to enter into mediation under the auspices of the Office of the United Nations Ombudsman and Mediation Services (“UNOMS”). In his email, Counsel for the Applicant writes

that he sought and secured an extension to the time limit for requesting management evaluation of the decision to remove the Applicant from his post, followed by a further extension, to allow more time for informal resolution to succeed.

15. On 1 February 2018, the Director, SC, UNIC, wrote to the Applicant informing him of the decision of the USG, DPI, to temporarily re-assign him to the position (P-5) of Deputy Director, UNIC in Washington, D.C. effective immediately through 30 June 2018, and asking for the Applicant's earliest possible date of travel to his new post. The Applicant replied by email of 8 February 2018 that his earliest possible date was 4 April 2018 as he was undergoing a medical treatment at the time.

16. By email of 7 February 2018, the Chief, Management Evaluation Unit ("MEU") wrote to a Senior Mediator, UNOMS, that MEU would "continue to hold the [Applicant's] request for management evaluation in abeyance and extend the 45-day deadline pending informal [resolution] efforts for two months, until 7 April 2018".

17. By email of 27 March 2018 copied to the Applicant, the above-mentioned Senior Mediator informed the Chief, MEU, that the "mediation process [had] ended due to the fact that one party withdrew from the mediation".

18. On 5 April 2018, the Applicant requested management evaluation of a) the decision to remove him from his post, b) the failure to pay him benefits and entitlements that should have accrued following his removal from his post and c) the failure to address his complaints for harassment.

19. Absent a reply to his request for management evaluation, the Applicant filed the application referred to in para. 1 above. The Respondent filed his reply on 17 September 2018, with annexes 10, 11 and 12 submitted on an *ex parte* basis.

20. By Order No. 145 (GVA/2018) of 19 September 2018, the Respondent's *ex parte* annexes were placed under seal and made accessible to the Applicant.

Parties' submissions

21. The Applicant's principal contentions are:

- a. The Organization failed to assert his privileges and immunities as an International Civil Servant following pressure from the local government to remove him from Pakistan as *persona non grata* ("PNG");
- b. There is no written evidence, such as a Note Verbale, showing that he was declared PNG in Pakistan;
- c. The Organization failed to address in an effective way the circumstances that led to his removal from Islamabad;
- d. In fact, he was a victim of harassment and discrimination based on sexual orientation made against him by the National Information Officer ("NIO") of UNIC's Country Office in Islamabad;
- e. The Organization failed to clarify his contractual status following his removal from Islamabad; and
- f. He is entitled to be paid the full cost incurred for his air fare ticket and shipment, as well as compensation for moral damages.

22. The Respondent's principal contentions are:

- a. The application is not receivable because the Applicant did not meet the statutory deadline to file a request for management evaluation (receivability *ratione materiae*). He should have done so by 9 January 2018 but only filed his request on 8 April 2018. The Applicant's claim that the Chief, MEU, extended the deadline in question cannot stand as the MEU had no authority to do so, and the Applicant has not proved that the appropriate authority, the Under-Secretary-General for Management, extended it;

- b. The application is also time-barred because the Applicant did not file it within 90 days of the breakdown of mediation, and he has not provided any evidence that his request to extend the deadline to request management evaluation was accepted (receivability *ratione temporis*);
- c. The decision to remove the Applicant from his post in Islamabad was lawful as he was declared PNG by the local authorities;
- d. The Organization made all *bona fide* efforts to persuade the respective Government to reconsider;
- e. The Organization reassigned the Applicant to a temporary position in Geneva from 16 November 2017 to 11 April 2018. From 12 April 2018, he has been placed against a P-5 position as Senior Public Information Officer in Washington, D.C.;
- f. The Applicant is neither entitled to be paid storage costs nor to a refund of the cost of his air ticket in business class from Islamabad to Geneva. He is only entitled to approved standard accommodation; and
- g. As for moral damages, the Applicant was not able to provide any evidence of harm suffered from his removal from Islamabad.

Consideration

Receivability ratione materiae

23. The record shows that the Applicant received notification of the contested decision on Saturday, 11 November 2017. The 60-day deadline to request management evaluation was therefore due to expire on Wednesday, 10 January 2018.

24. On 5 January 2018, Counsel for the Applicant requested the MEU a two-month extension of the deadline to file a request for management evaluation (“MER deadline”). The email thread on file supports that following confirmation from UNOMS that mediation was ongoing, the Chief, MEU, extended the MER deadline twice, with the final extension being up to 7 April 2018. In this connection,

the Tribunal finds that the reference by the Chief, MEU, in his email of 7 February 2018 to the extension of a “45-day deadline” (instead of a 60-day deadline) until 7 April 2018 can only relate to a MER deadline and not to one to respond to a management evaluation request as none had been filed by the Applicant.

25. UNOMS informed the MEU that mediation broke down on 27 March 2018. Shortly after, the Applicant inquired with the MEU about filing a request for management evaluation by 6 April 2018 and the Chief, MEU, accepted that date. The Applicant requested management evaluation on 5 April 2018.

26. According to the internal case law (see *Wu* 2013-UNAT-306), the involvement of the Ombudsman’s office in “the settlement negotiations [amounts] to the Secretary-General’s implicit extension of the management evaluation deadline for the period of the negotiations”. Also, staff rule 11.2(c) provides that the MER deadline “may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General”.

27. The Tribunal is satisfied that the Applicant acted diligently with respect to the filing of his request for management evaluation and met the deadlines set forth by the MEU. This is particularly relevant as the reason for the elapsed time to file such request was the attempt at informal resolution of the dispute under the auspices of the UNOMS. Consequently, the Tribunal finds no merit in the Respondent’s argument that there is no evidence that the deadline to request management evaluation was extended and finds that the application is receivable *ratione materiae*.

Receivability ratione temporis

28. The Respondent argues that the application is time-barred because the Applicant did not file it within 90 calendar days of the date at which mediation broke down. In support of his claim, the Respondent relies on art. 8.1(d)(iv) of the Tribunal’s Statute which, concerning receivability and more specifically the deadline to file an application, provides in its relevant part that:

Where the parties have sought mediation of their dispute **within the deadlines for the filing of an application under subparagraph (d)** of the present paragraph, but did not reach an agreement, the application is filed within 90 calendar days after the mediation has broken down. (emphasis added)

29. In cases requiring a request for management evaluation, such as the present one, the deadline of 90 calendar days to file an application starts either as of the date of receipt of the response to a management evaluation request or as of the expiry of the relevant response period.

30. It is undisputed that the parties entered into mediation *before* the Applicant's filing of a request for management evaluation. It follows that the parties did not seek mediation *within* the deadline to file an application (90 calendar days) as no deadline was running given the absence of a request for management evaluation. This situation falls outside the scope of art. 8.1(d)(iv) of the Tribunal's Statute which, therefore, is not applicable to the Applicant's case.

31. In the Applicant's case, the deadline of 90 calendar days to file an application is governed by sub-paragraph b. of art. 8.1(d)(i) of the Tribunal's Statute and art. 7.1(b) of the Tribunal's Rules of Procedure, as he did not receive a response to his request for management evaluation filed on Thursday, 5 April 2018.

32. The deadline of 45 calendar days for the MEU to respond expired on Sunday, 20 May 2018. Pursuant to art. 34(b) of the Tribunal's Rules of Procedure it was automatically extended to Monday, 21 May 2018. Therefore, the deadline of 90 calendar days to file an application expired on Sunday, 19 August 2018 - it was extended to Monday, 20 August 2018 pursuant to art. 34(b) of the Tribunal's Rules of Procedure.

33. The Applicant filed his application on 10 August 2018. Consequently, he was within the statutory deadline to file an application and the Tribunal finds his application receivable *ratione temporis*.

Merits of the case

34. Concerning the merits of the case, the Tribunal has identified the following legal issues for consideration:

- a. Whether the decision to remove the Applicant from Islamabad was lawful;
- b. Whether the Organization has failed to define the Applicant's contractual status after his removal;
- c. Whether the Organization has failed to address issues related to the alleged harassment and discrimination of the Applicant by another staff member; and
- d. Whether the Applicant is entitled to remedies, namely:
 - i. To be reimbursed the full fare of his round-trip ticket between Geneva and Islamabad;
 - ii. To be exempted from the payment of storage costs;
 - iii. To be compensated for moral damages; and
 - iv. To be reimbursed for sundry expenses.
- a. Lawfulness of the decision to remove the Applicant from his post in Islamabad

35. The Applicant contests the decision to remove him from Islamabad alleging that there is no evidence that he was declared PNG and that the Secretary General failed to assert his privileges and immunities as an international civil servant.

36. The Respondent argues that the decision to remove the Applicant from his post in Islamabad was lawful as the host government specifically requested his removal from the country. Otherwise, the Applicant would be declared PNG.

37. According to the available evidence on file, on 11 November 2017, the Applicant was informed that it was “imperative” for him to leave Islamabad by 15 November 2017, which was the “deadline set by the Pakistanis” (see para. 3 above).

38. The Tribunal has carefully examined the emails annexed to the Respondent’s reply (see Annexes 10, 11 and 12), and finds that these documents demonstrate that on 30 October 2017, during a meeting with the Acting Resident Coordinator for Pakistan, representatives of the MOFA conveyed that the Government had decided to declare the Applicant PNG within the following two weeks.

39. The representatives of MOFA also indicated that they preferred to examine alternative solutions to allow the Applicant to leave Pakistan “with a less public context”. The representatives of MOFA gave three reasons for the decision: the Applicant’s a) involvement in “cases of harassment against female colleagues”, b) “use of abusive language and authority under UNIC staff”, and c) portrayal of an “excessive negative image of Pakistan in the media”.

40. The evidence also shows that in New York, the USG/DPI and other Senior Officials met with the Permanent Representative and the Deputy Permanent Representative of the Permanent Mission of Pakistan to the United Nations. In Islamabad, the Acting Resident Coordinator, Resident Coordinator and the Executive Officer, DPI, met with representatives of MOFA.

41. During these discussions, the Organization’s representatives expressed concern about the Government’s intention to declare the Applicant PNG, requested reconsideration of the Government’s position, and explained that allegations against staff members must be resolved according to the Organization’s own procedures. These efforts, however, did not yield positive results and the Applicant left Pakistan on 16 November 2017.

42. There is evidence on file that clearly explains and justifies the decision to remove the Applicant from his post in Islamabad. Indeed, it was the Pakistani Government that clearly communicated to the Organization, in a meeting held on 30 October 2017, the reasons why the Applicant was no longer welcome in the

country. Moreover, it is clearly demonstrated that, despite the Organization's efforts, the local authorities did not change their mind on the matter.

43. It is relevant to recall this Tribunal's position in cases where a host government request the removal of a staff member (see *Porras* UNDT/2019/178, paras. 22 to 27 and *Milicevic* UNDT/2018/101, para. 34 ff.). Every sovereign nation has the right to determine whether it will receive or allow the stay of a diplomatic envoy from another nation in its territory. Therefore, the logical consequence of a PGN declaration is that the sending nation must recall its agent. This applies *mutatis mutandis* to staff members of the United Nations who, in turn, would have to be reassigned, whenever possible, outside of the host nation in question.

44. It follows that the Secretary-General's discretion to reassign a staff member is somewhat limited by his duty to accept a host nation's request to remove a staff member from its territory, which may lead to situations where a staff member has to be reassigned on an urgent basis, as it was in the Applicant's case.

45. It is well-established case law of the United Nations Appeals Tribunal that the reassignment of a staff member falls within the Organization's broad discretion to use its resources and personnel as it deems appropriate, pursuant to staff rule 1.2(c). As previously held in *Porras* and *Milicevic*, if a host nation communicates to the Organization that a staff member is no longer welcome, the Organization, absent a resolution of the matter, has no option but to communicate it to the affected staff member and to reassign the staff member to another post, commensurate to his/her grade, skills and position, without economic loss (see *Rees* 2012-UNAT-266 and *Kamunyi* 2012-UNAT-194, para. 3).

46. In the case at hand, it is proven that the Organization was able to reassign the Applicant to posts at the same level and commensurate with his skills and competencies, first as Senior Public Information Officer (P-5) in Geneva and, subsequently, as Deputy Director (P-5), UNIC, in Washington, D.C..

47. The sequence of events clearly show that the Organization acted quickly and in good faith towards the Applicant to prevent what could have been an embarrassing situation not only for him but also for the image and interests of the Organization in Pakistan.

48. The Applicant points out two other arguments to contest the decision to remove him from Islamabad. One is the alleged failure to assert his privileges and immunities as an international civil servant and, the other is the apparent lack of a formal Note Verbale declaring him PNG.

49. The Tribunal is not persuaded by either of these arguments as the circumstances of the case speak for themselves. There was no Note Verbale because the Pakistani authorities intended to have the case handled “discreetly” and preferred instead to leave it up to the Organization to take care of the situation in an informal way. Secondly, the Tribunal finds the Organization acted to prevent an “escalation” of the incident and took all appropriate steps to find a solution for the Applicant according to its duty of care towards its staff members.

50. The Tribunal is therefore satisfied that the Applicant was reassigned to a post, commensurate with his level, skills and previous experience at another duty station.

51. Moreover, the Tribunal also finds that the Applicant was not able to demonstrate that the decision to remove him from Islamabad was tainted by improper motives as there is no evidence of any bias against him.

52. In view of the foregoing, the Tribunal finds that the decision to remove the Applicant from Islamabad and to reassign him to a new post, first in Geneva and, later, in Washington, D.C., is not arbitrary or an unlawful exercise of administrative discretion.

Whether the Organization has failed to define his contractual status after removal

53. The Applicant claims that the Organization has failed to consider him for available positions in Luanda (despite his willingness to learn Portuguese), New York as a P-5 or to a D-1 position that was later filled with an external candidate. He

argues that he is rostered at the P-5 and D-1 level and that DPI only proposed an assignment in Jakarta that he declined.

54. The Tribunal is not persuaded by the Applicant's arguments because the choice of a new assignment is a prerogative of the Organization provided that it meets the requirements set forth by the Appeals Tribunal (see *Rees* and *Kamunyi*). In fact, the Applicant has not demonstrated that his assignments to Geneva and later to Washington, D.C. were prejudicial to him in any way.

55. The fact that the Applicant preferred to be reassigned to a P-5 post in New York or to a D-1 position does not render any of his reassignments an unlawful exercise of administrative discretion.

Failure to properly address harassment and misconduct from another staff member

56. The Applicant claims that the Organization (in particular the Executive Officer, DPI) has failed to address the harassment and discrimination he was facing from the NIO in the Islamabad Office. More specifically, he argues that this failure led to his removal from Pakistan and taints the said decision, which in turns warrants the award of compensation for damages.

57. The Respondent argues that from 2015 to 2017, DPI provided continued support and guidance to the Applicant in his capacity as Senior Public Information Officer, UNIC, in Islamabad, to deal with performance and manage issues relating to the NIO. The Respondent also argues that the Regional Ombudsman was involved, and that the Applicant is required to follow the Organization's procedures for making complaints of prohibited conduct or reporting a staff member for possible unsatisfactory conduct.

58. The record shows that since approximately 2015, the Applicant raised concerns with his supervisors about performance shortcomings and the behaviour of the NIO, who was under the Applicant's direct supervision. There is also evidence of the implementation of a performance improvement plan for the NIO and of an investigation conducted by United Nations Department of Safety and Security ("UNDSS") involving the NIO and her allegedly harassing a colleague.

59. The Tribunal recognizes the difficult working environment in which the Applicant had to operate. Although the Tribunal fails to understand why the Organization did not pursue further the NIO's conduct issues raised by the Applicant and in the UNDSS report, it finds that the Applicant has not demonstrated a link of causality between the Pakistani's government decision to request that he be removed from the country and the NIO's behaviour. His allegation of the NIO's involvement is speculative and does not warrant finding that the Organization's failure to address harassment and misconduct on the part of the NIO, either under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) or under ST/AI/371 (Revised disciplinary measures and procedures) amended in May 2010, taints the contested decision.

Remedies

60. The Applicant requests to be reimbursed the full air fare of his round-trip ticket from Geneva to Islamabad, storage costs of his personal belongings and sundry expenses (arising from his sudden removal, namely the sale of his car at a low price).

Air fare

61. It is undisputed that the Organization and the Applicant operated under very short deadlines from the moment that the former determined that the Applicant had to leave Pakistan. The Applicant, who was in Geneva at the time the decision was made, was requested to find a round-trip flight so that he could return to Islamabad and fly back to Geneva by 15 November 2017. There was a window of two to three working days for that to happen.

62. Although under the circumstances it is understandable to ask a staff member to actively participate in the search of flights and the purchase of the airline tickets, it is the responsibility of an Executive Office, where there is one, or of the Organization's Travel Section, to approve the purchase of airline tickets and to ensure that the applicable rules are complied with.

63. The record clearly shows that by email of 11 November 2017, the Applicant informed the Executive Officer, DPI, about the cost and itinerary of the least expensive option for the Applicant to travel to Islamabad on 12 November 2017. That email had all the necessary itinerary information, specifically departure and arrival times at each stop-over, to allow the Executive Officer to verify compliance with the applicable rules.

64. By email also of 11 November 2017, the Executive Officer unequivocally authorized the Applicant to purchase his “own ticket in Geneva on the most economical rate **business class** in Geneva” (emphasis added). The Applicant cannot be held responsible, under the circumstances, for the fact that the Geneva Islamabad leg did not qualify for business class fare. That verification was the responsibility of the Executive Officer and cannot be shifted to the Applicant on the grounds of a telephone conversation during which the former alleged to have inquired about compliance with the applicable travel rules.

65. Furthermore, as indicated in para. 45 above, cases calling for the quick removal of a staff member from a country, under the circumstances such as the ones in the Applicant’s case, require that the Organization ensure that the affected staff member does not incur economic loss or that, at the very least, the said loss be kept to a minimum.

66. Consequently, the Tribunal finds that the Applicant is entitled to be reimbursed the full cost of the air fare for his round-trip between Geneva and Islamabad in November 2017. It is to be noted that, as per the Respondent’s assertion at para. 30 of his reply and annex 6 therein, the Applicant has been partially reimbursed and, as a result, he is to be paid the difference between the amount claimed (i.e., USD4,209.58) and the reimbursement received (i.e., USD3,042.10).

Storage costs

67. The record shows that approximately seven months elapsed between the date that the Applicant left Pakistan and the date at which the container with his personal items was shipped. Given the time taken to initiate the shipment, the shipping company charged storage costs, albeit not for the entire period following negotiations by the Organization, amounting to USD850.

68. The Tribunal is mindful that under normal reassignment circumstances, storage costs are to be borne by the staff member. In the Applicant's case, however, the Tribunal recalls that there were extraordinary circumstances given the parties involved and the little time granted by the Government to arrange all aspects of the Applicant's departure from Pakistan. The Tribunal reiterates that the Organization's duty of care towards the Applicant in this case relates not only to securing alternative employment for him but also to avoiding or, at the very least, minimizing financial hardship on the Applicant.

69. Consequently, the Tribunal finds that the Applicant is not liable for the storage cost, which is to be borne by the Organization.

Moral damage and sundry expenses

70. In view of the Tribunal's finding that the contested decision is lawful, there are no grounds for considering the award of compensation for moral damages.

71. With respect to sundry expenses, which the Applicant did not quantify, the Tribunal finds that they are to be borne by him.

Conclusion

72. In view of the foregoing, the Tribunal DECIDES that:

- a. The decision to remove the Applicant from his position in Islamabad is lawful;

- b. The Respondent is to reimburse the Applicant the full amount of the Geneva-Islamabad round-trip ticket that the latter purchased in November 2017, deducting the amount already paid to him as per para. 66 above;
- c. The Respondent is to bear the storage costs charged by the shipping company; and
- d. All other pleas are rejected.

(Signed)

Judge Teresa Bravo

Dated this 27th day of November 2020

Entered in the Register on this 27th day of November 2020

(Signed)

René M. Vargas M., Registrar, Geneva