



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

BROWN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT

Counsel for Applicant:

Robbie Leighton, OSLA

Counsel for Respondent:

Jérôme Blanchard, LPAS, UNOG

Introduction

1. The Applicant, a former staff member of the Office of the High Commissioner for Human Rights (“OHCHR”) contests “[t]he manner in which [her] ST/SGB/2008/5 complaint was processed and the decision not to initiate a disciplinary process”.

Facts

2. The Applicant served OHCHR as a Senior Human Rights Officer at the P-5 level from 2 December 2012 to 21 May 2015. She was recruited on a two-year fixed-term appointment while the incumbent of the post was assigned to another position. Upon return of the incumbent of the post, her contract was not renewed but it was extended for the duration of her certified sick leave until May 2015.

3. On 2 March 2018, a journalist contacted the Spokesperson, OHCHR, and informed him that a newspaper intended to publish an article about the Applicant, who claimed that her contract was not renewed “after” she engaged in alleged whistleblowing activities (the report of alleged child abuse in 2014) during her employment with the Organization. The journalist requested OHCHR’s comments in this respect.

4. On 2, 3 and 4 March 2018, the Spokesperson, OHCHR, exchanged three “off the record” emails with the journalist. The Media Officer, OHCHR, also sent the journalist a copy of Judgment *Brown* UNDT/2017/048 in which this Tribunal dismissed the Applicant’s claims concerning the non-renewal of her fixed-term appointment.

5. On 4 March 2018, a newspaper published an article titled “Britain Must Act Says Woman who Exposed vile UN Child Abuse” referring to the Applicant.

6. On 27 July 2018, the Applicant submitted to the Assistant Secretary-General of the then Office of Human Resources Management and the High Commissioner for Human Rights (“HCHR”), a “report of prohibited conduct and a formal complaint of severe harassment and abuse of authority” against the Spokesperson, OHCHR. It is the content of the emails sent by the Spokesperson to the journalist from 2 to 4 March 2018 that led to the Applicant’s complaint.

7. By letter dated 6 September 2018 to the HCHR, the Applicant requested her reinstatement at the P-5 level in OHCHR, a public apology from OHCHR and an investigation into the OHCHR Spokesperson’s communications with the media.

8. By email dated 26 November 2018 to the HCHR, the Applicant followed-up on her request of 6 September 2018.

9. By email dated 17 December 2018 to the HCHR, the Applicant requested a “final administrative decision” by 21 December 2018 on her complaint of harassment and abuse of authority.

10. By email dated 21 December 2018, the Chief of Programme Support and Management Services, OHCHR, informed the Applicant that her complaint had been reviewed in accordance with ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) and that “it [had] been determined that the initiation of a disciplinary process [was] not warranted. He indicated that “all further actions required in respect of [her] complaint [had] been taken”.

11. On 31 December 2018, the Applicant requested the HCHR to reconsider her decision of 21 December 2018 by 11 January 2019. Alternatively, she also requested that the HCHR lift the privileges and immunities of the OHCHR Spokesperson and of OHCHR so that she could take legal action against them under Swiss law.

12. On 18 February 2019, the Applicant requested management evaluation of the handling of her complaint and, specifically, of the decision not to initiate a disciplinary process.

13. On 5 April 2019, the Applicant was informed of the outcome of her request for management evaluation, i.e., that it was considered not receivable.

14. On 27 June 2019, the Applicant filed the present application and on 17 July 2019, the Respondent filed his reply and a motion for summary judgment.

15. On 16 December 2020, the Applicant filed her comments on the issue of receivability raised by the Respondent.

Consideration

16. The Tribunal will address the receivability of the application that the Respondent challenges in his reply containing a motion for summary judgment.

17. The Respondent informs *inter alia* that the Applicant is not a staff member and he claims there is an insufficient nexus between the impugned decision and the Applicant's former employment with the Organization.

18. Article 3(b) of this Tribunal's Statute provides that a former staff member of the United Nations may file an application before this Tribunal.

19. In *Shkurtaj* 2011-UNAT-148, the Appeals Tribunal held that "a former staff member has standing to contest an administrative decision concerning him or her if the facts giving rise to his or her complaint arose, partly arose, or flowed from his or her employment. There must be a sufficient nexus between the former employment and the impugned action".

20. It is a fact that the Applicant is a former staff member who separated from OHCHR in May 2015. The evidence shows that following her separation from service, the Applicant made declarations on her own volition and in an individual capacity to a journalist who contacted OHCHR in relation to the Applicant's allegations that her contract was not renewed "after" she engaged in so-called whistleblowing activities during her employment with the Organization.

21. The Tribunal finds that there is an insufficient nexus between the Applicant's former employment with OHCHR and the contested decision because the act that led to her complaint for harassment and abuse of authority, that is, the Applicant's declarations to the journalist who later contacted the OHCHR Spokesperson, was the result of her actions taken in her individual capacity, which cannot be considered as having a nexus with her former employment contract.

22. The Tribunal recalls that in its Judgment *Brown* UNDT/2017/048, it decided that the non-renewal of the Applicant's fixed-term appointment was lawful and that it was not tainted by extraneous factors.

23. Unlike the Applicant's situation, in *Shkurtaj* UNDT/2010/156, this Tribunal decided *inter alia*, that the Applicant had standing to file a case concerning the implementation of the ethics policy because during the time that he was a staff member with UNDP, he had raised concerns about possible misconduct at UNDP, and it was this act that led to his later request for protection from possible retaliation. This Tribunal further considered that there was "a sufficient nexus between the time period [the Applicant] worked as a staff member, the allegations he raised with respect to the operations of the UNDP office in [...], and his allegations of retaliation to find his appeal receivable".

24. While the Appeals Tribunal considered the test for standing in *Shkurtaj* and defined it broadly, the Tribunal is not convinced for the reasons explained in para. 21 above that, in the present case, there is a sufficient nexus between the Applicant's former employment in 2015 and her complaint for harassment and abuse of authority against the OHCHR Spokesperson in 2018.

25. The Tribunal finds that the Appeals Tribunal's decision in *Shkurtaj* does not create a precedent for this case, as it is based on a different rationale and distinct factual premises. In fact, whereas in *Shkurtaj* the contested decision was directly linked to the staff member's employment status (as he raised concerns about possible misconduct while he was still employed with the Organization and was related to his work and potential retaliatory practices), in the instant case the contested decision is not linked to the Applicant's employment status. Indeed, it

involves a self-created fact (the Applicant's initiative to speak to journalists), which happened more than three years after her contractual link with the Organization had ceased.

26. Consequently, the Tribunal finds the application is not receivable and hereby issues a summary judgment in accordance with art. 9 of its Rules of Procedure.

Conclusion

27. In view of the foregoing, the Tribunal DECIDES that the application is dismissed in its entirety.

Judge Teresa Bravo

(Signed)

Dated this 25th day of March 2021

Entered in the Register on this 25th day of March 2021

(Signed)

René M. Vargas M., Registrar, Geneva