



Before: Judge Francesco Buffa

Registry: Nairobi

Registrar: Wanda L. Carter

HANDY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Nisha Patel, AS/ALD/OHR, UN Secretariat

Nasuru Magomu, AS/ALD/OHR, UN Secretariat

Introduction

1. On 31 July 2024, the Applicant, a former P-4 Political Affairs Officer at the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (“MINUSCA”), filed an application regarding:

- a. The refusal to expunge a disciplinary sanction letter dated 2 November 2021 from his human resources records (Issue 1);
- b. The breach of a Settlement and Release Agreement (“the Agreement”) due to the early termination of his fixed-term contract (Issue 2);
- c. The failure to pay salary, compensation, repatriation grant, and reinstatement grant (Issue 3); and
- d. The cruel and unjust treatment by the United Nations Administration (Issue 4).

Facts

2. On 16 September 2019, the Applicant filed an application with the UNDT contesting the decision not to renew his fixed-term appointment beyond 31 July 2019. The case was assigned Case No. UNDT/NBI/2019/139. By Judgment No. UNDT/2019/160, the Dispute Tribunal determined that the application was moot. The Applicant appealed the UNDT Judgment to the United Nations Appeals Tribunal (“UNAT”).

3. On 26 June 2020, UNAT issued Judgment No. 2020-UNAT-1015 which vacated the UNDT Judgment and remanded the case to the UNDT for appropriate consideration in accordance with UNAT’s decision. The remanded case was registered as Case No. UNDT/NBI/2019/139/R1.

4. In March 2021, the Applicant and Organization signed the Agreement. The Agreement stipulated, *inter alia*, that in consideration of the renewal of his fixed-term appointment with MINUSCA to 31 December 2021, the Applicant would withdraw Case No. UNDT/NBI/2019/139/R1.

5. On 30 March 2021, the Applicant filed a motion seeking leave to withdraw Case No. UNDT/NBI/2019/139/R1. The motion was granted by Order No. 070 (NBI/2024).

6. On 22 April 2021, a disciplinary process was initiated against the Applicant based on allegations of misconduct. The Applicant provided his comments in response to the allegations on 17 August 2021. On 23 and 26 August 2021, the Applicant submitted documents in support of his comments.

7. On 2 November 2021, the Assistant Secretary-General for Human Resources conveyed the decision of the Under-Secretary-General for Department of Management Strategy, Policy and Compliance (“USG/DMSPC”) with respect to the allegations of misconduct of 22 April 2021. The USG/DMSPC concluded that: (i) the allegations against the Applicant had been established by clear and convincing evidence; (ii) through his conduct, the Applicant had violated staff regulations 1.2(b), 1.2(e), 1.2(f), 1.2(g), 1.2(o), staff rules 1.2(q), 1.2(s), 1.2(t) and 6.2(i), sections 3.1, 4.1 and 4.3 of ST/AI/2000/13 (Outside activities), and D.13 of the United Nations Department of Public Information Policy on Strategic Communications and Public Information; (iii) his actions amounted to serious misconduct; and (iv) his procedural fairness rights were respected throughout the investigation and the disciplinary process. On that basis, and considering aggravating and mitigating factors, it decided to impose on the Applicant the disciplinary measure of separation from service with compensation *in lieu* of notice, but without termination indemnity in accordance with staff rule 10.2(a)(viii).

8. On 31 January 2022, the Applicant filed a motion for extension of time to file an application before the Dispute Tribunal in respect of the decision to impose the 2 November 2021 disciplinary sanction against him. On 2 February 2022, the Tribunal issued Order No. 10 (NBI/2022) rejecting the Applicant’s motion on the ground that he had failed to show any exceptional circumstances justifying the request. The Applicant appealed Order No. 10 to UNAT. (By Order No. 452 (2022) of 21 April 2022, UNAT rejected his appeal).

9. On 12 April 2022, the Applicant filed an application to contest the Secretary-General's decision to withhold his final pay and pension entitlement since 2 November 2021. On 30 September 2022, the Tribunal issued Judgment No. UNDT/2022/096 which rejected the application as irreceivable. The Applicant did not appeal the Judgment.

10. On 23 and 29 January 2024 and 26 February 2024, the Applicant requested management evaluation of the Issues described in para. 1(a) – (d) above.

11. On 28 February 2024, the Chief of the Management Advice and Evaluation Section ("MAES") found that the Applicant's Issues pertain to matters that occurred circa 2021 and were not receivable because they were outside MAES's scope of review, were moot, or time-barred.

12. On 31 March 2024, the Applicant filed this application mentioned.

13. On 16 July 2024 the Respondent filed a motion requesting the Tribunal to determine the receivability of the application as a preliminary matter under art.19 of its Rules of Procedure, and to suspend the Respondent's deadline of 2 August 2024 to file a reply to the application pending the Dispute Tribunal's determination on the motion.

14. By Order No. 98 (NBI/2024) dated 31 July 2024, the Duty Judge allowed the Applicant to file a response to the motion by Friday, 9 August 2024, and extended the deadline for the Respondent to file a reply to the application to the same date.

15. On 5 August 2024, the case was assigned to the undersigned Judge.

16. On 9 August 2024, the Applicant filed a response to the above-mentioned motion. On the same date the Respondent filed a reply on the merits.

17. On 21 August 2024, the Tribunal issued Order No. 113 (NBI/2024) in which the Respondent's motion to determine the receivability of the application as a preliminary matter was denied and the parties were directed to their closing submissions by 5 p.m. (Nairobi time) on Friday, 13 September 2024.

18. The Respondent filed his closing submission as directed. The Applicant filed his closing submission on Sunday, 15 September 2024, without justifying his lateness.

Parties' submissions

19. The Applicant's principal contentions are:

a. The Respondent's challenge of the receivability of the application is a calculated effort to escape accountability for a decade-long pattern of egregious misconduct through procedural technicalities. The interest of justice demands that this defence be vacated in its entirety, as it is devoid of merit and serves only to perpetuate the Respondent's extensive violations of staff rights, court orders, and humanitarian principles.

b. The disciplinary sanction letter dated 2 November 2021, is based on "outdated, debunked, and frivolous allegations". These baseless charges must be removed from his record as they constitute a blatant violation of his rights.

c. The United Nations violated the Agreement signed on 16 March 2021. This breach was brought to the attention of the UNDT in January and February 2022, yet no corrective action was taken.

d. In 2008, after he resigned from the then United Nations Organization Mission in the Democratic Republic of the Congo ("MONUC"), the United Nations Federal Credit Union ("UNFCU") illegally seized his entire final salary. For 14 years, UNFCU refused to reopen his account, violating their statutes. This egregious act must be rectified.

e. Despite his being owed indemnities, final salary, rental subsidies, and his daughter's education grant, the United Nations has failed to pay him. There is no evidence of any funds being transferred to his ING bank account in Brussels, which has been active for over 20 years.

f. The Organization's suspension of his life insurance for over five years while he served in a war zone constituted reckless endangerment, leaving him

and his family exposed to significant risk. Adding to this, he was unlawfully deprived of his salary for eight months without justification. These acts represent gross negligence and harassment. Compounding this, his home was assaulted by armed gunmen and rebels during which the Organization abandoned its duty of care by refusing to intervene or provide him any form of assistance.

g. Despite clear and repeated medical recommendations from healthcare professionals in Singapore, France, the United States of America, Senegal, Cameroon, Canada, and Belgium to avoid dusty environments and remain within 48 hours of accessible medical facilities, the United Nations forced him to remain in hazardous conditions for over 12 years. This blatant disregard for his health represents a gross violation of the United Nations Disability Strategy and is a direct breach of the Organization's commitment to ensuring the health, safety, and dignity of its employees.

h. The Office of Internal Oversight Services ("OIOS") investigation against him represents a flagrant violation of due process and an abuse of authority. The investigation was conducted by an incompetent investigator who was "illiterate in French". The investigation relied solely on telephone interviews with individuals thousands of miles away from the mission area, many of whom were not even connected to the United Nations. The investigation concluded two years after he had left the Organization and none of his peers or colleagues who worked with him in Bangui were ever interviewed. Instead, the investigator gave free rein to external parties, including some of his estranged family members and known criminals with no ties to the United Nations, allowing them to spread falsehoods unchecked. The investigation excluded all exculpatory testimonies, including key witnesses.

i. The OIOS investigation was riddled with procedural flaws.

j. Over the past two decades, the Administration's actions have consistently shown a pattern of systemic abuse, gross misconduct, and the

misuse of administrative procedures to undermine his career. The charges levelled against him were not backed by evidence, and were made with malicious intent in a desperate effort to terminate his employment without just cause.

20. The Applicant seeks the following reliefs:

- a. All falsehoods and baseless charges, including those outlined in the censure letter of 2 November 2021, be removed from his official status file;
- b. Rescission of the breach of the Agreement and full restitution;
- c. Financial compensation from 2021 until his retirement age of 65 for the emotional, psychological and professional harm caused;
- d. Payment of all pending entitlements, including his final salary, indemnities and his daughter's education grant;
- e. A formal apology from the Organization to restore his reputation and acknowledge the emotional and professional harm caused;
- f. Reconstitution of his career with all his lost career progression and pension rights restored; and
- g. The individuals responsible for these actions be held accountable and their behavior reported to the appropriate oversight bodies.

21. The Respondent's principal contentions are:

Issue 1

- a. Issue 1 is not receivable. There is no evidence that it is a reviewable administrative decision under art. 2.1(a) of the UNDT Statute. The sanction letter dated 2 November 2021 was placed on the Applicant's human resources record in accordance with section 9.4 of ST/AI/2017/1 (Unsatisfactory Conduct, Investigations and the Disciplinary Process). The Applicant has not shown how the placement produces direct legal consequences, impacting his

terms and conditions of appointment. The Applicant's mere disagreement and dissatisfaction with the letter's contents do not counter its lawful placement.

b. The case file shows that the Applicant did not contest the decision of 2 November 2021, to impose the disciplinary sanction on him before the UNDT within 90 calendar days, and the time limits for contesting this matter have been strictly enforced. By Order No. 10 (NBI/2022) of 2 February 2022, the Dispute Tribunal dismissed his request for more time to contest the disciplinary sanction for lack of exceptional circumstances. By Order No. 452 (2022) of 21 April 2022, UNAT rejected his appeal of Order No. 10 (NBI/2022).

c. Should the Tribunal find Issue 1 receivable, it lacks merit. The Organization complied with the mandatory requirement to place the disciplinary sanction letter on the Applicant's human resources record and there is no basis for the Applicant to request its removal. The Organization's decision to sanction him was legal, reasonable, proportionate, and procedurally correct: the disciplinary measure was based on facts established by clear and convincing evidence, the established facts amounted to misconduct, the sanction was proportionate to the misconduct and the Applicant's due process rights were respected.

Issue 2

d. Issue 2 is not receivable. The Applicant had 60 calendar days from when he received notice of his disciplinary sanction on 2 November 2021, to submit a request for management evaluation regarding the alleged breach of the Agreement. The Applicant did not submit his request until over two years later. Article 8.3 of the UNDT Statute states that deadlines for management evaluation cannot be suspended or waived. Contrary to the Applicant's assertion, there is nothing in the Agreement that allows for contestation within three years from its last provision's effective date, 31 December 2021.

e. Should Issue 2 be receivable, it lacks merit. The Applicant's assertions that the Agreement represents a grave injustice and that the Organization

violated the Agreement are unpersuasive. The case file shows that the Organization implemented its undertakings in art. 2 of the Agreement “to renew the Releasor’s fixed-term appointment until 31 December 2021 and raise a personnel action notification reflecting the same”. The Applicant’s reliance on *Tosi* 2019-UNAT-946. is misplaced because it concerns an unimplemented settlement agreement which is not the situation here.

f. The Agreement, which concerned a particular context and therefore had a limited purpose, did not preclude the Applicant from his obligation of upholding the highest standards of conduct expected of international civil servants. Nor did it bar the Organization from finding the Applicant committed misconduct and from imposing a disciplinary sanction. At the time the Applicant signed the Agreement on 16 March 2021, he knew the Organization was investigating allegations against him and that he had participated in an interview with OIOS on 24 October 2019. The onus was on the Applicant to properly understand the Agreement and what it covered and did not cover. By signing the Agreement, he acknowledged under art. 11 that he had “had adequate time to review the Agreement and consult legal counsel”.

g. The Applicant’s argument that the Agreement was “designed to prevent wrongful termination” implicitly seeks to vary the terms of the Agreement retroactively to impose additional obligations on the Organization. It is a cardinal principle of contract law that the terms of a valid contract bind parties. The Agreement was a valid contract, and the Organization implemented all its obligations under it.

Issue 3

h. Issue 3 is not receivable. The case file shows that the Applicant did not request management evaluation within 60 calendar days from when there was a reviewable administrative decision regarding his salary and other payments and that the time limits for contesting this matter have been strictly enforced. On 2 November 2021, the Applicant was separated from the United Nations.

By Judgment No. UNDT/2022/096 of 30 September 2022, the Dispute Tribunal dismissed his request for review of the withholding of his final pay and all his entitlements with compensation since 2 November 2021, due to the lack of a management evaluation request. The Applicant did not appeal and he did not request management evaluation until early 2024.

i. Should Issue 3 be receivable, it lacks merit. The case file shows that the Organization paid the Applicant's relocation grant on 19 January 2022; his salary, compensation in lieu of notice, and other payments on 20 April 2022; and his repatriation grant on 19 July 2023.

j. The Applicant's assertion that "the Administration allowed UNFCU to pursue a debt claim after 14 years, in clear violation of both organizational policy and the statute of limitations in New York" is misconceived. It is the internal laws of the Organization that govern staff matters and not national law. Staff rule 3.18(c) of ST/SGB/2018/1/Rev.1 (Staff Regulations and Rules of the United Nations) (superseded by ST/SGB/2018/1/Rev.2) and ST/AI/155/Rev.2 (Personnel Payroll Clearance Action), including paragraph 6 of the annex to ST/AI/155/Rev.2, concern deductions from salaries and other emoluments. Under these provisions the Organization lawfully deducted monies owed to UNFCU from the Applicant's final entitlement on separation. Any disagreements the Applicant may have with UNFCU and the payment of his UNFCU loans are beyond the UNDT's scope of review.

Issue 4

k. Issue 4 is not receivable. It is a reiteration of Issues 1 to 3 which are not receivable.

l. Insofar as Issue 4 relates to alleged unsatisfactory conduct by Senior Managers, there is no reviewable administrative decision. The case file shows that on 1 March 2024, the Applicant petitioned the Executive Office of the Secretary-General to launch a fact-finding mission and, therefore, the process into this complaint was ongoing at the time of the filing of the application.

The UNDT has no jurisdiction to perform its own investigation into the allegations.

m. Should the scope of Issue 4 extend beyond Issues 1 to 3 to concern “a pattern of behavior tracing back to 2011”, his generalized complaint identifies no reviewable administrative decision and would have been subject to the regulatory framework under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment and abuse of authority) (superseded by ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority)), or ST/AI/2017/1 and the 60-day deadline for requesting management evaluation of any alleged decisions regarding violations of that framework.

n. The case file shows that UNDT and UNAT have not found his alleged pattern of abuse of 12 years receivable. For matters known to the Applicant for more than three years, art. 8.4 of the UNDT Statute is an absolute restriction on judicial discretion and the UNDT cannot waive the time limit to file an application more than three years after an applicant’s receipt of the contested administrative decision.

o. Should Issue 4 be receivable, it lacks merit. Lawful conduct is not mistreatment. The Organization lawfully separated the Applicant from the United Nations for serious misconduct and lawfully paid the monies owed to him. The Applicant’s separation did not breach the Agreement. The Applicant’s allegations such as “egregious and systematic actions by the United Nations Administration” and “[e]ndless [l]ist of [m]alpractice at the United Nations is [e]xceptional [h]ateful” are mere assertions. No evidence on the case file shows the Organization acted unlawfully towards the Applicant, let alone cruelly and unjustly.

Consideration

22. The four different issues above mentioned will be examined separately.

Issue 1

23. The first claim concerns the inclusion of a disciplinary sanction letter in the Applicant's official status file.

24. It is necessary to preliminarily highlight that the claim is not about the separation decision or the disciplinary sanction (to which the parties refer in their closing submissions), which accordingly cannot be examined.

25. So narrowed the matter, the Tribunal notes that the claim is receivable, given that the placement produces direct legal consequences, impacting the terms and conditions of appointment of the staff member, and therefore it is a reviewable administrative decision under art. 2.1(a) of the Dispute Tribunal's Statute.

26. As to the merit, the Applicant's claim regarding the refusal to expunge the disciplinary sanction letter dated 2 November 2021 from his human resources records is without basis. Indeed, section 9.4 of ST/AI/2017/1 requires that a disciplinary sanction letter "shall be placed in the official status file of the staff member concerned".

27. The Organization complied with the mandatory requirement to place the disciplinary sanction letter on the Applicant's official status file and there is no basis for the Applicant to request its removal (see also *Gnassou* 2018-UNAT-865, para. 35).

28. For the reasons above mentioned, this Tribunal will not address the facts underpinning the disciplinary measure and will not assess at all if they have been proved or are legally relevant.

Issue 2

29. The second claim concerns the alleged breach of the Agreement due to the early termination of his fixed-term contract.

30. This claim is also receivable. Indeed, while there is an administrative decision impacting on the Applicant's work relationship, the management evaluation of the decision is mandatory to assess the decision itself, not to verify if the decision entails, as a different and side effect, an alleged breach of an agreement.

31. The claim, however, lacks merit.

32. The Tribunal is aware of the contentions in the case *Tosi* 2019-UNAT-946, recalled by the Applicant, where a settlement agreement was breached when the appointment of the staff member was not renewed and the Tribunal was called to assess the respect of obligations of the implementation of the agreement "in its spirit" by the Administration. (*Tosi* UNDT/2019/003 found that the Administration had acted in bad faith in violation of the intent of the settlement agreement and consequently rescinded the non-renewal decision and awarded him compensation.)

33. The Applicant's reliance on the *Tosi* case however, is misplaced because, apart from any consideration of the outcome of the appeal judgment, it concerns an unimplemented settlement agreement, which is not the situation in the case at hand; here the Organization implemented its undertakings in art. 2 of the Agreement to renew the Applicant's fixed-term appointment until 31 December 2021, and raise a personnel action notification reflecting the same.

34. Moreover, nothing in the Agreement precluded supervening events, such as the Organization finding that the Applicant had committed misconduct and imposing a disciplinary sanction.

35. The relevance given by the Administration to the supervening event is therefore lawful, as the Agreement did not include any clause preventing the Administration to consider, for disciplinary reasons, facts which had already occurred at the time of the Agreement.

Issue 3

36. The third claim is related to the alleged failure by the Administration to pay salary, compensation, repatriation grant, reinstallation grant.

37. This issue is not receivable.

38. It is worth noting that on 12 April 2022, the Applicant already had filed an application to contest the Secretary-General's decision to withhold his final pay and pension entitlement since 2 November 2021.

39. By Judgment No. UNDT/2022/096 of 30 September 2022, the Dispute Tribunal dismissed his request for review of the withholding of his final pay and all his entitlements with compensation since 2 November 2021 for lack of a management evaluation request. The said judgment was not appealed.

40. Although the Applicant does not demonstrate that the allowances requested in this case are different from those already concerned by the previous dispute, it results from the recalled judgment that on 20 April 2022, the United Nations Regional Service Centre in Entebbe released the Applicant's final pay without the repatriation grant which was being processed when he filed the application.

41. Moreover, the Respondent demonstrated (R/4 Relocation Grant Statement dated 19 January 2022; R/10 Pay Statement dated 20 April 2022; R/11 Repatriation Grant Statement dated 19 July 2023) that the Organization had paid the Applicant's relocation grant on 19 January 2022; his salary, compensation in lieu of notice, and other payments on 20 April 2022; and his repatriation grant on 19 July 2023.

42. The case file shows that the Applicant did not request management evaluation within 60 calendar days from when there was a reviewable administrative decision regarding his salary and other payments.

Issue 4

43. The fourth claim is related to alleged cruel and unjust treatment by the United Nations Administration.

44. The Tribunal notes that if the treatment complained of concerns the other claims 1 to 3, then claim 4 is not receivable, being a reiteration of issues already assessed unfavourably to the Applicant. If it refers to the disciplinary sanction, the claim is not receivable, given that the decision was not challenged (see Order No.

10 (NBI/2022) and UNAT Order No. 452 (2022)). If it concerns “a pattern of behavior tracing back to 2011”, even recalling in the closing submissions an unsubstantiated alleged suspension of a generic life insurance in an undetailed period and a generic and unsubstantiated violation of the Administration’s duty of care and the United Nations disability strategy, the complaint is inadmissible as it identifies no reviewable administrative decision.

Conclusion

45. In light of the foregoing, the Tribunal rejects the application in its entirety.

(Signed)

Judge Francesco Buffa

Dated this 10th day of October 2024

Entered in the Register on this 10th day of October 2024

(Signed)

Wanda L. Carter, Registrar, Nairobi