



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2019/046/
R1
Order No.: 110 (NBI/2022)
Date: 10 August 2022
Original: English

Before: Judge Francis Belle
Registry: Nairobi
Registrar: Abena Kwakye-Berko

ULAR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON CASE MANAGEMENT

Counsel for the Applicant:
Irene Kashindi

Counsel for the Respondent:
Nicole Wynn, AAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant holds a fixed-term appointment at the FS-4 level with the United Nations Organisation Stabilisation Mission in the Democratic Republic of Congo (“MONUSCO”). She serves as an Administrative Assistant and is based in Kinshasa.

2. On 3 May 2019, she filed an application with the Dispute Tribunal. The Applicant described the decisions she challenges as: (a) continued harassment, unfair treatment and abuse of authority that cannot be classified as one single decision; (b) breach of several rules and regulations; (c) not being considered and bypassed for promotion on several occasions resting with a decision made on 22 January 2019; (d) not being compensated for work performed at a higher level; and (e) failure to address a claim for sexual harassment and abuse.

3. On 10 June 2019, the Respondent filed his reply.

4. On 9 January 2020, the Applicant filed a motion seeking an order for interim measures to reassign her to another duty station because of alleged ill-treatment by her colleagues and her Second Reporting Officer (“SRO”) following the filing of her application on 3 May 2019. The Tribunal issued Order No. 013 (NBI/2020) dismissing the motion for interim measures.

5. On 23 July 2020, the Tribunal issued Order No. 140 (NBI/2020) to manage the case. Among other things, the Tribunal asked the parties if they were amenable to the matter being resolved *inter partes*.

6. On 4 August 2020, the parties filed a joint motion for suspension of proceedings pending mediation and asked that the matter be referred to the United Nations Ombudsman and Mediation Services (“UNOMS”) to facilitate the process. This

motion was granted on 6 August 2020 by Order No. 147 (NBI/2020) suspending proceedings to 31 August 2020.

7. On 31 August 2020, the Director of Mediation Services wrote to the Registry of the UNDT seeking more time for the parties to continue with their “good faith efforts” to resolve this matter without recourse to litigation.

8. On 2 September 2020, the Tribunal issued Order No. 168 (NBI/2020) granting the extension of time that was sought.

9. On 2 October 2020, the Director of Mediation Services informed the Tribunal that the parties were continuing their discussions in good faith towards a partial settlement of the dispute.

10. On 6 October 2020, the Tribunal issued Order No. 195 (NBI/2020) to allow more time for the partial settlement to be finalised.

11. On 15 October 2020, the Applicant informed the Tribunal that the dispute had been partially settled and withdrew that part of the claim which was no longer in dispute.

12. The Tribunal held a case management discussion with the parties on the same day to discuss delineation of the issues that remained in dispute.

13. Following the parties’ respective submissions on receivability and the need for an oral hearing, the Tribunal scheduled another case management discussion on 16 November 2020.

14. On 10 December 2020, the Tribunal issued Order No. 236 (NBI/2020) refusing the Applicant’s motion for an oral hearing. The parties were directed to file their respective closing submissions.

15. In Judgment No. UNDT/2020/221, rendered on 31 December 2020, the Dispute Tribunal dismissed two of the Applicant's claims but found that the Respondent had abused his authority in mishandling the sexual harassment complaint. The Dispute Tribunal ordered the Respondent to provide the Applicant with a clear explanation for not pursuing her sexual harassment complaint and denied the other remedies sought.

16. The Appellant appealed the Tribunal's judgment and moved the Appeals Tribunal for an award in damages for mishandling her sexual harassment complaint as well as damages for harassment, unfair treatment and abuse of authority, and an immediate promotion to a post at the FS-5 level or *in lieu* compensation.

17. On 18 March 2022, the United Nations Appeals Tribunal rendered Judgment No. 2022-UNAT-1212.

18. The Appeals Tribunal stated as follows:

Because the failure of the Dispute Tribunal to expressly rule on the motion was an error of procedure that affected the decision of the case as it related to Ms. Ular's claim for moral damages, we remand the issue of compensation for harm to the Dispute Tribunal. We provide no opinion on whether compensation should be granted. Rather, we remand the matter to remedy the procedural error committed by the Dispute Tribunal and to ensure the Dispute Tribunal considers the

medical evidence included in the motion in its determination on compensation for harm.

Considerations

19. The Tribunal will now move to consider this matter, as remanded by the Appeals Tribunal and *per* its direction.

20. To this end, the Tribunal makes the following **ORDERS**:

- i. The Applicant will file fresh submissions on the discrete issue of harm and compensation for it by **24 August 2022**;
- ii. The Respondent will file his response to the Applicant's submissions by **8 September 2022**;
- iii. The Applicant may file her response to the Respondent's submissions, if any, by **23 September 2022**.

(Signed)

Judge Francis Belle

Dated this 10th day of August 2022

Entered in the Register on this 10th day of August 2022

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi