





Parker
(Appellant)



(Respondent)

JUDGMENT
[N o. 2010-UNAT-012]

Before: Judge Sophia Adinyira, Presiding
Judge Inés Weinberg de Roca
Judge Luis María Simón

Case No.: 2009-016

Date: 30 March 2010

Registrar: Weicheng Lin

Counsel for Appellant: Nicole Lewis

Counsel for Respondent: Jessica M. Elbaz

THE UNITED NATIONS APPEALS TRIBUNAL

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Case No. 2009-016

Submissions

14. Parker submits that the UNDT's findings were based on two errors in fact, resulting in a manifestly unreasonable decision, and an error in law, under Article 2.1 (c) and (e) of the UNAT Statute.

UNDT's Alleged Error in Finding Inadmissible Parker's Allegations regarding his Non-Promotion during the 2004-2005 Annual Promotions Session

Parker's Appeal

15. The UNDT found in Judgment No. 2009/013 that Parker's request for administrative review only covered allegations of harassment suffered from the beginning of 2005 to 7 November 2007. Parker challenges UNDT's finding that the allegations regarding his non-promotion in 2004 were inadmissible.

16. Parker contends that he had clearly raised the issue of his non-promotion during the 2004-2005 annual promotion session in his request for review as part of the allegations that UNHCR had subjected him to a pattern of harassment. The UNDT therefore erred in finding his allegations in this regard inadmissible.

17. Parker submits that in accordance with the holding of the former Administrative Tribunal in *Geadah*, (Judgment No. 754 (1996)) where a staff member was subjected to a pattern of harassment over a period of time, the individual decisions underpinning such harassment are admissible despite the fact that they would be time-barred if raised in isolation. Parker argues that he was clearly subjected to a pattern of harassment, starting with the decision not to promote him in 2004.

18. Parker further argues that his non-promotion should have been considered by the UNDT as constituting harassment.

Secretary-General's Answer

19. The Secretary-General submits that the appeal with respect to this issue is time-barred and should be dismissed. UNDT Judgment No. 2009/013 clearly sets forth the period of the alleged harassment.

20. The Secretary-General notes that Parker filed his appeal concerning this specific issue on 18 December 2009 in his appeal to UNDT Judgment No. 2009/066. In his request for administrative review and his submissions before the UNDT with respect to

Judgment 2009/013, Parker consistently argued that his non-promotion in 2004 constituted harassment. In Judgment No. 2009/013, the UNDT however determined that the period of the alleged harassment began in January 2005. If Parker had deemed this determination to be an error in fact which was manifestly unreasonable, he should have included this point in his appeal. Furthermore, in his Response to the

UNDT's Alleged Error in Finding that it was up to Parker to Request IGO to Investigate**Parker's Appeal**

24. Parker submits that the UNDT erred in law when it found that he was obliged to submit his case to the IGO. In Parker's view, the onus was on UNHCR to submit the matter to the IGO, once it had become aware of his allegations and the fact that the matter could not be resolved by the Mediator. Parker contends that under paragraph 23 of the UNHCR's Policy on Harassment, Sexual Harassment and Abuse of Authority (UNHCR Policy) and section 5.8 of the UNHCR Inter-Office Memorandum (IOM)/Field Office Memorandum (FOM) No. 054/2005, staff members who have been subjected to harassment can choose between formal and informal procedures in order to attempt to resolve the situation. The informal procedure is to engage the Mediator who engages the parties with a view to putting an end to the harassment. If the Mediator is unable to resolve the situation, he must inform the staff member of the procedure to follow in order to submit the matter to the IGO so that the formal procedure can commence. The staff member then has the discretion to do so.

25. Parker argues that in his case, even though he engaged the services of the Mediator, UNHCR's solution was for him to apply for a new post and the Mediator was only engaged to that extent. He submits that the Mediator was thus not engaged in trying to end the harassment and prevent it from reoccurring as required under the UNHCR policy and IOM/FOM No. 054/2005. In his view, the Mediator consequently did not provide the Parker with the option of referring the matter to the IGO.

26. Parker further asserts that the ultimate responsibility of ensuring that his case was submitted to the IGO rested with UNHCR. While the staff member has the option of submitting a case to the IGO, UNHCR has the obligation to do so. In his view, this flows implicitly from Section 11 of the UNHCR Policy and from the express provisions of the IOM/FOM No. 054/2005. Section 11 of the UNHCR Policy places a positive obligation on UNHCR to take steps to prevent and stop harassment of which it is aware. He argues that by implication this means that when it

ii. Did the UNDT err in finding on the merits that Parker had not been subjected to harassment?

iii. Did the UNDT err in finding that UNHC R was not obliged to submit the case to the IGO?

35. The Secretary-General submits that UNHCR did address the issue through the proper procedures.

36. In relation to this issue we observe that the UNDT noted at paragraph 20 of its judgment:

Nonetheless, the Applicant does produce some evidence supporting his assertion that his hierarchy failed to assign him work for a certain period; specifically, he presents an e-mail from the then Deputy Director, Africa Bureau, to the director, DHRM ... implying that the Applicant's supervisor was withholding work from him. In this connection, it should be borne in mind that the Deputy Director, being the supervisor of the Director, e24 Eth

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