



JUDGE ROSE BOYKO, Presiding.

Synopsis

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5. Azzouni's overall performance, recorded on her e-PAS, for the period June 2006-March 2007 was rated "fully successful" and all of her core values and competencies were rated "fully competent".

6. In August 2007, a new Executive Secretary Al-Dafa took up his duties at ESCWA and became Azzouni's first and second reporting officer. For the e-PAS covering the period from April 2007 to March 2008, which was completed on 12 April 2008, Al-Dafa gave Azzouni an overall rating of "fully successful performance." He rated her "fully competent" in respect of five of the 19 core values and competencies, but "developing" in respect of the other 14.

7. In response to a request as to whether he would extend Azzouni's FTA beyond 6 June 2008, Al-Dafa indicated that he wished to let her contract expire. In a memorandum dated 15 April 2008, the Chief of the Administrative Services Division of ESCWA informed Azzouni of Al-Dafa's decision not to extend her FTA.

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11. On 5 August 2008, the JAB recommended that the decision not to renew Azzouni's appointment be suspended until the PDOG completed its report. However, the Secretary-General did not accept that recommendation, though he instructed the PDOG to complete its investigation by the end of September 2008.

12. Azzouni was separated from service on 6 August 2008.

13. In its report adopted on 30 September 2008, the PDOG concluded that there was inadequate evidence to support a consistent pattern of discrimination and harassment, but that the decision not to renew Azzouni's contract was tainted by improper influence and abuse of authority. It also concluded that Azzouni suffered moral injury, distress, and anxiety aggravated by the violation of her due process rights, though her injury may not have been irreparable. The PDOG recommended that the impugned decision be rescinded and Azzouni be offered a new FTA, or in the alternative that she be compensated with six months' net base salary. In addition, it recommended that Azzouni receive no less than three months' net base salary for the injury to her due process rights. According to Azzouni, the Administration rejected the PDOG's findings and recommendations.

14. On 30 October 2008, Azzouni filed an appeal with the JAB against the decision not to renew her appointment.

“contradictory and insufficiently substantiated”, and concluded that Azzouni “has failed to demonstrate that the decision was discriminatory or that any of the motives for that decision were improper”.

16. The original Judgment No. UNDT/2010/005 was issued in French. The English translation of the Judgment was issued to Azzouni on 12 February 2010. On 29 March 2010, Azzouni appealed the Judgment. Her appeal was forwarded to the Secretary-General on 14 April 2010. The deadline for the respondent’s answer to the appeal was therefore 1 June 2010. On 27 May 2010, the Secretary-General requested a 30-day extension to file the answer, and on 1 June, he filed a note to clarify the reasons for his extension request. The President approved the 30-day extension request. On 1 July 2010, the Secretary-General filed an answer to the appeal.

17. On 2 August 2010, Azzouni filed a supplemental submission in rebuttal to the Secretary-General’s answer, in which she essentially reasserts the arguments made in her appeal.

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request to call six witnesses, she was denied the opportunity to submit evidence in support of her claim of harassment.

21. Azzouni contends that the UNDT relied on faulty or non-existent evidence and gave greater weight to Al-Dafa's testimony over the other witnesses such as Abdelhamid, without basis or foundation.

22. The UNDT failed to apply the correct burden of proof as set forth in UNDT Judgment in *Sefraoui*,¹ and improperly placed the burden of proof on Azzouni to prove the unlawfulness of the impugned decision. The UNDT Judge considered the PDOG finding unsubstantiated, yet he considered the unsubstantiated evidence presented by Al-Dafa against Azzouni, namely alleged written complaints about Azzouni made by her subordinates. Azzouni had never been made aware of those alleged criticisms by her subordinates.

23. Assouni argues that the UNDT failed to swear in the witnesses before they testified. The Judge adopted Al-Dafa's undocumented claims against Azzouni without placing him under oath or verifying whether or not he was telling the truth. He also accepted Al-Dafa's denials without question.

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with former Staff Rule 104.12 and the jurisprudence of the former Administrative Tribunal. The Administration did not have to justify its decision not to renew. The UNDT noted that Azzouni did not allege that ESCWA might have given her assurance of a continued employment beyond 6 August 2008.

26. The UNDT correctly considered that it was Azzouni's responsibility to prove discrimination and other improper motives. This finding is supported by the long-standing jurisprudence of the former Administrative Tribunal that the burden of proving discrimination or improper motivation rests with the party making the allegation. Moreover, this finding is confirmed by several UNDT Judgments. In this regard, the Secretary-General has expressed his disagreement with the *Sefraoui* Judgment, which stands for the proposition that neither party should be in a favoured position, that preponderance of evidence should be the general rule and that, in the absence of preponderance of evidence, the impugned decision should be regarded as unjustified.

27. The UNDT rightly noted that the fact that Al-Dafa criticized the content of a study on sensitive religious issues related to Sharia should not in itself be considered to demonstrate religious discrimination. It was Al-Dafa's prerogative to determine whether the name of ESCWA should be used to intervene in individual cases, and his decision in a particular case could not be considered as an act of religious discrimination. The UNDT found Al-Dafa's denials sufficiently credible for it to doubt that he had actually made the statements as alleged by Azzouni about the superiority of the values of Islam over those of the United Nations and the unsuitability of Azzouni for her position due to her Christian beliefs.

28. Regarding Azzouni's assertion of omissions of fact by the UNDT, the Secretary-General maintains that the fact that certain facts were not expressly addressed in the Judgment does not mean that the UNDT did not consider them, let alone erred in relation to them.

29. The Secretary-General submits that Azzouni has mischaracterized the UNDT's findings. The UNDT did not find that a supervisor could decide not to renew the FTA of a subordinate because of difficult relations with that subordinate. Rather, the UNDT found that Azzouni had lost confidence in Al-Dafa, while she considered her supervisor unsupportive of her work. Such a mutual loss

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opportunity she required to establish her allegations at the UNDT hearing, which included the opportunity to call evidence and to effectively challenge the Administration's evidence.

36. The main case against Azzouni was based on the evidence of Al-Dafa, which was contradictory and not given under any promise, oath or affirmation to tell the truth. The Dispute Tribunal must take care to admit credible and reliable evidence that will then be weighed by the Tribunal Judge.

37. We find that the Dispute Tribunal erred in law in allowing testimony to be given at its hearing that was neither sworn, affirmed, nor