

Case No. 2011-251



JUDGE MARY FAHERTY , Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal filed by Mr. Lestrade Charles on 9 September 2011 against Judgment No. UNDT/2011/139 rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 4 August 2011. The Secretary-General filed his answer on 31 October 2011.

Synopsis

2. Mr. Charles appeals the UNDT Judgment which rejected his request for compensation, while finding that his terms of appointment had been violated by the refusal of the Programme Officer-in-Charge, Sabbatical Leave Programme, Office of Human Resources Management (Programme OiC) to forward his application to the Sabbatical Leave Selection Committee (Committee). The Appeals Tribunal awards Mr. Charles compensation in the amount of one month's net base salary, computed on the basis of

6. On the same day, the Director forwarded the Supervisor's advice to the Appellant, noting that due to staffing and resource requirements

Submissions

Mr. Charles' Appeal

12. Mr. Charles submits that the UNDT exceeded its competence and erred in law and fact, inter alia, in finding that his application for sabbatical leave was not complete; in concluding that no informed evaluation would have been possible if the application for leave had been forwarded to the Committee; in assessing the Appellant's chances of being awarded the sabbatical leave if his application had been forwarded; in failing to award compensation to the Appellant; and in granting a 30-day extension to the Secretary-General to submit his reply without notifying the Appellant.

13. Mr. Charles seeks the reversal of the UNDT Judgment; compensation for the violation of [his] "employment and due process rights"; and compensation for moral injury.

Secretary-General's Answer

14. The Secretary-General submits that the UNDT correctly found that in light of ST/AI/2000/4 and ST/IC/2009/33 (United Nations sabbatical leave programme for 2010), the Appellant's leave application lacked a compatible schedule of work relating to his proposed one-month leave which was required as one of the six criteria under Section 4 of ST/AI/2000/4 for a proper assessment of his application. His application was therefore "manifestly incomplete".

15. The Secretary-General submits that, contrary to the Appellant's submission, the UNDT did not err in stating that his application was incomplete since it did not contain sufficient information to allow the Committee to make a reasoned decision. The proposal is part of the application and in the present case it failed to include a work schedule.

16. The Secretary-General submits that the UNDT correctly concluded that there was no basis for an award of damages. The UNDT properly assessed and concluded that, in light of the totality of the circumstances, the Appellant suffered no harm from the breach that it found. He further submits that the UNDT did not exceed its competence by assuming the role of the Committee.

17. In response to the Appellant's assertion that the UNDT erred in allowing the Secretary-General additional time to submit a reply to the Appellant's application, the Secretary-General submits that the Appellant in fact himself admitted that he did not object to the Secretary-General's motion for leave to file a late reply.

Considerations

18. The UNDT correctly determined that, as a matter of logic, the provisions of Section 1.2 and Sections 4.1 and 4.2 of ST/AI/2000/4 when read together with paragraph 6 of ST/IC/2009/33 (the relevant circular at the time in question) stipulate that the Appellant's application for sabbatical leave (and the study proposal contained therein) fell to be evaluated by the Committee. The UNDT also correctly found that the determination made by the Programme OiC, namely that the application for sabbatical leave should not be forwarded to the Committee, was not within the Programme OiC's power.

19. The Dispute Tribunal thus concluded, again correctly, that the decision made by the Programme OiC was in breach of the Appellant's terms of employment "specifically, his right to have his application forwarded to the Committee and the [Assistant Secretary-General], OHRM".

20. The issue for this Tribunal is whether the Dispute Tribunal Judge erred (i) in his finding that the Programme OiC reasonably concluded that the application for sabbatical leave was "incomplete" and (ii) in his conclusion that notwithstanding that the Appellant's employment rights were breached, he suffered no loss because, in the view of the UNDT, no "reasonable decision maker" (the Committee in question) could have approved a one or two months' period of sabbatical leave, as sought by the Appellant, as this timeframe did not accord with the five-month work schedule contained in the proposal which formed part of Mr. Charles' application. In the present appeal, the Respondent submits that there was no error of law or fact on the part of the UNDT Judge.

21. With regard to (i) above, the Dispute Tribunal Judge properly observed that an "incomplete application may therefore be one which is missing one of the documents specified in [paragraphs 4 and 5 of ST/IC/2009/33]". The Appellant does not take issue with this view and the Appeals Tribunal upholds the finding, inherent in the UNDT Judgment, that the Programme OiC would be entitled not to forward an application to the Committee if there was an objective

27. Was the UNDT correct in its determination on the issues set out in (i) and (ii) above? We do not believe that it was. In the first instance, we uphold the Appellant's contention that his application was not incomplete. His proposal did not lack a schedule of work; rather it contained a schedule with a timeframe which was at variance with the period of leave being applied for. We do not find that the facts in this case therefore allowed for a finding that the application was "manifestly incomplete".

28. It is the considered opinion of this Tribunal that the impact of the conflict between the five-month work schedule and the one/two-month leave being applied for was something that fell to be adjudicated on by the Committee. It is our view, on a matter of law, that the evaluation in this context was the sole preserve of the Comm

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Dated this 29th day of June 2012 in Geneva, Switzerland.

(Signed)

Judge Faherty, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Garewal

Entered in the Register on this 12th day of September 2012 in New York, United States.

(Signed)

Weicheng Lin, Registrar