



Judgment No. 2015-UNAT-572



Counsel for Mr. Ivanov: Joseph Grinblat
Counsel for Secretary-General: Nathalie Defrasne

JUDGE DEBORAH THOMAS

7. On 9 January 2013, Mr. Ivanov wrote to the USG/DESA to express his disagreement with the conclusions of the Investigation Panel as conveyed by the Executive Officer.
8. On 16 January 2013, the Executive Officer, DESA, informed Mr. Ivanov that based on a review of the Investigation Panel's report, the USG/DESA decided, on 9 January 2013, to close the case "without proposing further action in accordance with sec. 5. 18 of ST/SGB/2008/5".¹
9. On 26 January 2013, Mr. Ivanov requested management evaluation of the decision to close the case in respect of his defamation and harassment complaint.
10. In a letter dated 19 March 2013, the USG for the Department of Management (DM) informed Mr. Ivanov of the outcome of the management evaluation conducted by the Management Evaluation Unit (MEU). The MEU noted that more than three months had elapsed between the filing of Mr. Ivanov's complaint and the establishment of the Investigation Panel contrary to the requirement for "prompt review" set forth in Section 5.14 of ST/SGB/2008/5.²

¹ Section 5.18 of ST/SGB/2008/5 reads (internal citation omitted):

On the basis of the report, the responsible official shall take one of the following courses of action:

(a) If the report indicates that no prohibited conduct took place, the responsible official will close the case and so inform the alleged offender and the aggrieved individual, giving a summary of the findings and conclusions of the investigation;

(b) If the report indicates that there was a factual basis for the allegations but that, while not sufficient to justify the institution of disciplinary proceedings, the facts would warrant managerial action, the responsible official shall decide on the type of managerial action to be taken, inform the staff member concerned, and make arrangements for the implementation of any follow-up measures that may be necessary. Managerial action may include mandatory training, reprimand, a change of functions or responsibilities, counselling or other appropriate corrective measures. The responsible official shall inform the aggrieved individual of the outcome of the investigation and of the action taken;

(c) If the report indicates that the allegations were well-founded and that the conduct in question amounts to possible misconduct, the responsible official shall refer the matter to the Assistant Secretary-General for Human Resources Management for disciplinary action and may recommend suspension during disciplinary proceedings, depending on the nature and gravity of the conduct in question. The Assistant Secretary-General for Human Resources Management will proceed in accordance with the applicable disciplinary procedures and will also inform the aggrieved individual of

Submissions

Mr. Ivanov's Appeal

13. The Dispute Tribunal erred in fact in quoting the MEU as saying that Mr. Ivanov had declined the compensation of USD 1,000 offered by the Secretary-General. Mr. Ivanov declined USD 1,000 because he refused to accept the attached condition that he withdraw his defamation and harassment complaint. The UNDT also erred in stating that Mr. Ivanov filed his closing submission on 18 August 2014, when he had filed it on 15 August 2014.

14. The Dispute Tribunal erred in law when it concluded that Mr. Ivanov was not entitled to the full report of the Investigation Panel. There is no regulation forbidding him from receiving such a report. Furthermore, the UNDT's conclusion is inconsistent with the basic practice in the Organization and all democratic justice systems that any document available to one party of a dispute is to be made available to the other party.

15. The Dispute Tribunal erred both in fact and in law in finding that accusing Mr. Ivanov of having medical problems that endangered his colleagues and mental health problems was not "harassment" within the meaning of ST/SBG/2008/5, but was related to performance issues.

16. The Dispute Tribunal erred in law in stating that it did not have authority to request a new investigation.

17. Mr. Ivanov requests that this Tribunal find that he was a victim of harassment in the form of defamation and his due process rights were violated, and order that he be given a copy of the report of the Investigation Panel so that he can defend himself against the false allegations. Furthermore, Mr. Ivanov requests that the Appeals Tribunal award him an unspecified monetary compensation for the emotional stress and the damage to his reputation and career caused by the false allegations.

The Secretary-General's Answer

18. The Dispute Tribunal correctly concluded that Mr. Ivanov was not entitled to the full report of the Investigation Panel. The Administration had no further obligation under ST/SGB/2008/5 after it had provided Mr. Ivanov with the full and verbatim conclusions of the Investigation Panel.

19. As the UNDT correctly concluded, there was no legal basis to rescind the USG/DESA's decision to close Mr. Ivanov's case or to open a new investigation. The Dispute Tribunal found that, apart from the procedural delays which violated the requirements of ST/SGB/2008/5, the Administration had correctly followed the investigation procedures outlined therein. Consequently, there was no reason for the UNDT to quash the report of the Investigation Panel and order a new investigation.

20. Mr. Ivanov is not entitled to further compensation. His claim for compensation is not warranted and should therefore be rejected.

21. The Respondent requests that this Tribunal dismiss the appeal in its entirety and affirm the impugned Judgment.

Considerations

22. One of the main issues for consideration is whether the UNDT erred in its conclusions that Mr. Ivanov was not entitled to a full investigation report after the Investigation Panel found that his supervisor's conduct against which he had filed a complaint on 28 October 2011 did not amount to harassment within the meaning of ST/SGB/2008/5, but instead reflected performance-related disagreements.

23. When a formal complaint or report of workplace harassment is received, the procedure to be adopted is clearly outlined in the Secretary-General's Bulletin ST/SGB/2008/5. This procedure provides, inter alia, for the appointment of a fact-finding panel to look into the allegations; the said panel is mandated

25. In this case, a summary of the findings and conclusions of the Investigation Panel was provided to Mr. Ivanov. He disagreed with these findings and sought to have them reviewed. This request was denied.

26. Mr. Ivanov, though entitled to receive a su

