
**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

**Nielsen
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge Mary Faherty, Presiding Judge Deborah Thomas-Felix Judge Richard Lussick
Case No.:	2015-724
Date:	24 March 2016
Registrar:	Weicheng Lin

... By email of 7 February 2015, the Applicant submitted a request for management evaluation (“the first request”) that she described, in the title of her email, as concerning, inter alia, “the DHR managers”. In the request for management

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while her performance report rebuttal was on-going; her unlawful placement on SLWFP; the intolerant attitude towards her culture smacking of national or racial discrimination; and her mistreatment by her PSB colleagues and UNFPA management.

10. Ms. Nielsen clarifies that she is “not asking for any financial compensation in this case”. However, she requests that the Appeals Tribunal admit annex 2 to her appeal on an *ex parte* basis and declare she was a victim of harassment, abuse of authority and discrimination by the UNFPA DHR, Legal Office and the Office of the Executive Director so as to “help restore [her] reputation”.

The Secretary-General’s Answer

11. The UNDT Judgment concerns receivability issues only. Therefore, Ms. Nielsen’s arguments on the merits should not be considered, as the UNDT did not rule on these issues. Similarly, her arguments on other matters not related to the present case should not be considered.

12. The Secretary-General further requests that this Tribunal exclude parts of Ms. Nielsen’s appeal which clearly exceeds the 15-page limit as set forth in the Appeals Tribunal’s Rules of Procedure. Her nine-page appeal form contains four pages of arguments. In addition, she has provided a 15-page appeal brief and attached arguments of four pages each to several annexes including annexes 2 and 6.

13. The Dispute Tribunal correctly determined that Ms. Nielsen’s application was not receivable as it was untimely. It appropriately disposed of the application by summary judgment. The record indicates that Ms. Nielsen filed her complaint on 2 October 2014, nine months after her separati

of the time limit under the 2013 UNFPA Policy. Rather, it was a response from OAIS to Ms. Nielsen, in which OAIS informed Ms. Nielsen of the outcome of its preliminary assessment of her complaints against the DHR and the UNFPA Legal Office. When she filed an application with the UNDT on 19 April 2015, Ms. Nielsen had already received that OAIS communication. Thus, this is not “new information” and should therefore not be accepted.

15. The Secretary-General requests that the Appeals Tribunal affirm the Judgment and dismiss the appeal in its entirety.

Considerations

Preliminary issue - request for an oral hearing

16. Ms. Nielsen has requested an oral hearing. The Tribunal does not find that an oral hearing is necessary or would assist in the expeditious and fair disposal of the case within the meaning of Article 18(1) of the Appeals Tribunal’s Rules of Procedure. Accordingly, the request is denied.

Ms. Nielsen’s motions

17. On 9 September 2015, Ms. Nielsen filed a motion “to request [the Appeals Tribunal] to extend [her] rights as a staff member or to admit that they were extended by [UNFPA’s Executive Director]”. The Secretary-General requests that the Appeals Tribunal deny the motion, as Ms. Nielsen has failed to provide any exceptional circumstances justifying the inclusion of this motion as an additional pleading. He submits that Ms. Nielsen has filed the motion in order to supplement her earlier appeal brief with pleas wholly outside the present appeal. Regarding Ms. Nielsen’s request to extend her staff rights, the Secretary-General stresses that the Appeals Tribunal has not been accorded the authority to extend a staff member’s appointment and only the recruiting organization has such authority.

18. With regards to the motion to extend Ms. Nielsen’s rights as a staff member, the Appeals Tribunal has concluded that there are no exceptional circumstances which would warrant the granting of the motion. We take the view that the thrust of the motion, insofar as any matter contained therein can be said to be relevant to the issues in this

appeal, is essentially an attempt by Ms. Nielsen to supplement arguments already made in the course of her appeal submissions. The motion is denied.

19. On 14 September 2015, Ms. Nielsen filed a “Motion to protest against the Respondent’s statement”, effectively taking issue with a number of submissions made by the Respondent in his answer to the appeal which was filed on 4 September 2015.

20. In his observations on this motion, the Secretary-General requests that the Appeals Tribunal deny the motion in light of Ms. Nielsen’s failure to provide any exceptional circumstances justifying the inclusion of this motion as an additional pleading. He contends that Ms. Nielsen has filed the motion in order to supplement her earlier appeal brief with pleas wholly outside the present appeal. Regarding her assertion that harassment continued even during her SLWFP, the Secretary-General states that Ms. Nielsen’s assertion is without merit and she simply expresses her disagreement with the Respondent’s answer and repeats the same allegations against various former colleagues that she made in her separate cases against them. He further submits that Ms. Nielsen’s reference to the UNDT’s finding that there was no contact between her and her PSB colleagues during her SLWFP is entirely misplaced as the Dispute Tribunal did not allude to this issue in the UNDT Judgment.

21. We agree with the Secretary-General’s submission that there is no basis upon which to admit Ms. Nielsen’s motion and the relief she seeks by way of this motion is denied.

Ms. Nielsen’s appeal of Judgment No. UNDT/2015/039

22. In this case, Ms. Nielsen appeals Judgment No. UNDT/2015/039 rendered by

23. In the course of her voluminous appeal submissions, Ms. Nielsen does not take

further noted that there was “no indication on file that any extension of time limits was exceptionally granted to [Ms. Nielsen] by the Director, [OAIS]”.

27. We hold that that insofar as the UNDT rejected the application which was before it on the basis that Ms. Nielsen’s complaints to OAIS were not receivable by OAIS by reason of her status as a former staff member of UNFPA, the UNDT erred in law in so concluding. In arriving at its conclusion in this regard, the Dispute Tribunal relied on Section 3.1 of the 2013 UNFPA Policy which provides effectively that the scope of the policy applies to “Personnel”, being either “UNFPA staff members” or “Individual independent contractors”. However, the UNDT failed to have regard to Section 9.1 of the 2013 UNFPA Policy which provides that “[a]ny Personnel and/or former Personnel may file a complaint of Harassment, Sexual Harassment or Abuse of Authority with the Director, [OAIS]”. Thus as a former staff member of UNFPA, Ms. Nielsen had an entitlement to file a formal complaint with the Director of OAIS.

28. However, our finding that the Dispute Tribunal erred in law with regard to Ms. Nielsen’s legal standing to file complaints with OAIS is not dispositive of this appeal in Ms. Nielsen’s favour. It also falls to be determined whether the UNDT erred in finding that Ms. Nielsen’s complaints to OAIS were outside of the six months’ time limit for filing a formal complaint of harassment, as provided for in Section 9.3.1 of the 2013 UNFPA Policy. As already referred to, part of the Dispute Tribunal’s rationale for its finding was that there was no indication that the Director, OAIS, had extended the six months’ time limit which it is open to the Director to do “in exceptional cases” pursuant to Section 9.3.1 of the relevant policy.

29. Ms. Nielsen takes issue, *inter alia*, with the UNDT’s finding that an exception to the six months’ time limit had not been made in her case. She contends that the UNDT erred in fact and “exceeded its jurisdiction” by not asking her if she had an extension of time from the Director OAIS in which to bring her complaints.

30. In support of her contention that she was granted an extension of time by the Director, OAIS, Ms. Nielsen relies on a letter dated 31 March 2015 to her from the Director. Thyrt sieOAIS1-2.4(el36017 Tw[-3(a)-3 -1.7(i)363-1.7AIS 3 -1.7.0001..7qu001..7s88.6(-.,TJ/TT4 1

Appeals Tribunal, a request which was rejected by the President of the Appeals Tribunal in Order No. 230 dated 2 July 2015.

31. The letter of 31 March 2015 reads as follows:

Re: Conclusion of preliminary review of allegations by the UNFPA Office of Audit and Investigation Services

Dear Ms. Nielsen,

The Office of Audit and Investigations Services (OAIS) has completed its preliminary assessment into your complaints, filed with OAIS on 02 October 2014 and 10 December 2014, respectively, against ... Director, Division for Human Resources (DHR), and ..., Legal Specialist.

Having completed its preliminary assessment into the above-mentioned complaints, OAIS concluded that a *prima facie*

UNDT on 21 April 2015 Ms. Nielsen had in her possession the letter of 31 March 2015 from the Director, OAI, yet notwithstanding filing some 66 annexes with that application she failed to attach the said letter or make mention of it in the course of her 29-page application to the UNDT.

34. The 31 March 2015 letter had a direct relevance to the substantive content of the application she filed on 21 April 2015, not least in light of the following submission as contained in part V of her UNDT application:

As UNDT can see from my [request for management evaluation's] Nr. 26 and 27 I applied for Management Evaluation after waiting for the reply from UNFPA Investigation Office for few months and after not receiving any reply from UNFPA Investigation Office I took the silence of UNFPA Investigation Office as their decision that the involved offices ostensibly didn't do any misconduct as the fair amount of time was given to the from [sic] UNFPA Investigation Office in order to evaluate my complaint. All my previous cases show that UNFPA Investigation Office despite the presence of clear facts of lies and slanders on me from the involved in my cases UNFPA PSB staff members, nonetheless denied that the involved staff members did

did no more than advise her that OAIS had no jurisdiction to investigate such complaints and that they would be referred to “another UN agency/organization for assessment and/or investigation”. In this circumstance and notwithstanding Ms. Nielsen’s failure to bring this factor to the attention of the Dispute Tribunal, we hold, albeit with some reluctance, that nothing in Judgment No. UNDT/2015/039 should be read as interfering with the suggested mechanism for the processing of Ms. Nielsen’s complaints against the UNFPA Executive Director and the Office of the Executive Director. Accordingly, the referral to another United Nations agency/organization should be allowed to run its course.

Judgment

40. Judgment No. UNDT/2015/039 is upheld, save that the Appeals Tribunal deems that the said UNDT Judgment does not encompass the actions of OAIS in referring two of Ms. Nielsen’s complaints to another United Nations agency/organization, which referral should be allowed to run its course.

Original and Authoritative Version: English

Dated this 24th day of March 2016 in New York, United States.

(Signed)

Judge Faherty, Presiding

(Signed)

Judge Thomas-Felix

(Signed)

Judge Lussick

Entered in the Register on this 13th day of May 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar