



UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D 'APPEL DES NATIONS UNIES

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Judgment No. 2021-UNAT-1137



Appellant  
( Appellant )

v.

Secretary -General of the United Nations  
( Respondent )

JUDGMENT

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Before:	Judge Kanwaldeep Sandhu, Presiding Judge Martha Halfeld Judge Sabine Knierim
Case Nos.:	2020- 1434
Date:	25 June 2021
Registrar:	Weicheng Lin

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Counsel for Appellant: Omar Yousef Shehabj OSLA  
Counsel for Respondent: Noam Wiener

JUDGE KANWALDEEP SANDHU , PRESIDING .

1. The Appellant, a former staff member of the International Residual Mechanism for Criminal Tribunals (IRMCT) contested decision of the Administration not to refer a Medical Officer for accountability , following a complaint of prohibited conduct that she filed under Secretary-General's Bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment including sexual harassment and abuse of authority) (Bulletin) .

2. In its initial and corrected Judgment s unde.s un

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4. The issue before this Tribunal is whether the UNDT erred in its finding that the

12. The Panel found the Appellant and supporting witnesses were “clear, credible and gave no contradictory information”. They found the Medical Officer as articulate and forthcoming in the interviews but “some of his statements were contradictory when assessed with other reported facts”. For example, he stated he “always” conducts breast examinations during the medical examination of female patients but when informed that two other patients he examined the same day said he did not conduct the breast examination, he responded that he could not remember. However, the Panel did not determine that the Medical Officer lacked credibility in denying “sexual gratification” during the examination. They found no evidence that he had a history or pattern of sexual harassment. The Panel found that it was highly likely that he had not consistently performed breast examinations and he had not consistently conducted them “in accordance with accepted international medical standards”. The Panel also found that there was inconsistent evidence on how the Medical Officer conducted the breast examination, but this could be due to the Medical Officer “lacking attention to detail”.

13. However, the Panel found that the investigation did not prove “clear and convincingly” that the touching of the complainant’s breast was “sexual” in nature, particularly as the complainant was fully clothed and the touch was “perfunctory” . The Panel held it







31. Because the tribunal did not make a finding that the Panel considered irrelevant matters, such as the intent and motivation of the Medical Officer, it inevitably erred and reached a manifestly unreasonable decision.

32. a







46. The definition of prohibited conduct is set out in Section 1.3 of the Bulletin:

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49. We find the Dispute Tribunal correctly reviewed and rescinded the Contested Decision, largely because of procedural irregularities. However, the Contested Decision also contained other substantial errors, including consideration of irrelevant matters such as the Medical Officer's intent in determining whether prohibited conduct occurred. It is important to



57.



conducted the examination. To do otherwise would have been a violation of his due process rights.

65. We also find no error in the Dispute Tribunal's finding that the IRMCT adequately provided appropriate protection and accommodation to ensure a reasonable working environment and that the Appellant had access to medical services



68. There is also a terminology issue regarding the Dispute Tribunal's Order that should be addressed for clarification. The Dispute Tribunal ordered a "remand" of the matter to IRMCT. A remand to the Administration can only be ordered under Article 10(4) of the UNDT Statute, which gives authority to the Dispute Tribunal to remand "with the concurrence of the Secretary-General of the United Nations" and prior to the determination of the merits of a case. As the Secretary-General has not consented in this matter, the only remedies available to the Dispute Tribunal are contained in Article 10(5) of the UNDT Statute which allows the UNDT to rescind the Contested Decision or order specific performance and award compensation for harm.<sup>18</sup> The Dispute Tribunal rescinded the Contested Decision, which requires the IRMCT to reopen the complaint of prohibited conduct. The Dispute Tribunal's

72. In the Judgment, the Dispute Tribunal ordered USD 12,500 in moral damages pursuant to Article 10(5)(b) of the UNDT Statute, which provides the tribunal may order: “Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years’ net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation for harm, supported by evidence, and shall provide the reasons for that decision.”

73. We find no errors in the Dispute Tribunal’s award of damages. The tribunal accepted the undue delay in the process caused emotional harm and distress to the Appellant. There was no error in the application of the law nor was there an error of fact that resulted in a “manifestly unreasonable decision”. It was within the authority and jurisdiction of the tribunal to determine the quantum of the award based on the evidence and submissions.

74. In the absence of a compelling argument that the Dispute Tribunal erred on a question of law or fact, which is not present here, we will not lightly interfere with the computation of damages by the Dispute Tribunal.<sup>21</sup> Accordingly, this ground of appeal fails.

75. Finally, the Appellant asks the Appeals Tribunal to strike paragraph 54 from the Dispute Tribunal’s Judgment as it purportedly mischaracterized her testimony regarding her new position at the Secretariat in New York and questioned her professional integrity. The Appeals Tribunal declines this request as there is no authority for the Appeals Tribunal to order the Dispute Tribunal to revise or correct its judgments.

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<sup>21</sup> See

Judgment No. 2014-UNAT-467, para. 37.

Judgment

61. We affirm the Judgment on different grounds and dismiss the appeal.

Original and Authoritative Version: English

Dated this 25<sup>th</sup> day of June 2021.

Judge Sandhu  
Vancouver, Canada

Judge Halfeld  
Juiz de Fora, Brazil

Judge Knierim  
Hamburg, Germany

Entered in the Register on this 10<sup>th</sup> day of August 2021 in New York, United States.

Weicheng Lin, Registrar