
	Case No.:	UNDT/GVA/2010/025 (UNAT 1617)
	Judgment No.:	UNDT/2010/172
NATIONS DISPUTE TRIBUNAL	Date:	27 September 201010t
	Original:	French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: Víctor Rodríguez

LAURITZEN

v.

Introduction

1. In May 2008, the Applicant, who at the time was a staff member of the United Nations High Commissioner for Refugees (“UNHCR”), lodged an appeal with the former UN Administrative Tribunal against the High Commissioner’s decisions to (i) remove her from her post of UNHCR Representative in Hungary as from 1 March 2004; and (ii) to place and keep her on special leave with full pay until her retirement in June 2008.

2. The Applicant is asking the Tribunal:

a. To rescind the decision of 9 February 2004 whereby the High Commissioner removed her from her post of UNHCR Representative in Hungary as from 1 March 2004;

b. To reinstate her in the post she occupied or to appoint her to a position commensurate with her grade, training, skills and experience;

c. To grant payment of an amount equivalent to the difference between the post adjustment in Strasbourg which should have been paid to her and the one applicable to Budapest which was paid to her from March 2004 to June 2008;

d. To award her moral damages in the amount of USD250,000;

e. To award her USD25,000 in respect of costs and expenses;

f. To grant interest on monetary damages awarded.

3. Pursuant to the transitional measures set out in General Assembly resolution 63/253, the appeal which was pending before the former UN Administrative Tribunal was transferred to the United Nations Dispute Tribunal on 1 January 2010.

Facts

4. The Applicant entered the service of UNHCR on 23 October 1978 as a Clerk-Typist, G-3 level, in Rome, Italy. In 1980, the Applicant's appointment was converted from the General Service (G) category to the Professional (P) category. On 1 July 1988, her fixed-term appointment was converted to indefinite (100 series of the former Staff Rules, rule 104.12(c)). On 1 January 1999, the Applicant was promoted to P-5 level, and on 1 February 2002, she was appointed as UNHCR Representative in Budapest, Hungary.

5. At the time, the UNHCR Representation in Hungary and the Regional Support Unit for Budapest ("RSUB") shared the same premises in Budapest, the former providing administrative support to the latter but not having any direct authority over its activities. Both the Representation and RSUB reported directly to the Regional Bureau for Europe ("RBE"), at UNHCR Headquarters in Geneva.

6. In March and April 2003, within the framework of exchanges of emails concerning a clarification of reporting lines and roles for all UNHCR staff based in Budapest, the Director, RBE, asked the Applicant to provide him with a written assessment of the situation regarding relations between the Representation and RSUB. The Applicant told him that she could not provide such an assessment, as the problem in her view was the need to clarify reporting lines.

7. In July 2003, the Director, RBE, suggested involving the Mediator. The Applicant did not agree with that proposal on the grounds that there were no problems in Budapest that she could not solve herself and/or that would justify intervention by the Mediator.

8. In October 2003, the Senior Administrative Officer, RBE, undertook a mission to Budapest to clarify the respective responsibilities of the Representation and RSUB.

9. From 3 to 4 November 2003, the Director, RBE, and the Head of the Political Unit, RBE (who at the time was the RSUB supervisor), undertook a

mission to Budapest in order to review interpersonal problems between the Applicant and RSUB.

10. On 17 November 2003, the entire staff of the UNHCR Representation in Hungary, including the Applicant, signed and sent to Headquarters, with a copy to the Director, RBE, a petition against the Senior Regional Programme Officer, RSUB.

11. By email dated 21 November 2003, the Director, RBE, criticised the Applicant for signing the petition in question. He considered that such an act

13. On 29 January 2004, the Applicant travelled to UNHCR Headquarters in Geneva to discuss the above-mentioned report with the Director, RBE. At the meeting, the Director informed the Applicant that, given the situation in Budapest, he had decided—in consultation with the High Commissioner—to withdraw her from her functions as Representative, effective as of 1 March 2002.08 (h)-6.02.08 (abov)051ies-6.41(t)6.4(o)a4.7(Nme da4.7(Ny)62 D)-6..5(2)5.2(func-1.72e)-.

with full pay instead of immediately reassigning her to a post commensurate with her grade, training, skills and experience.

20. On 18 February 2004, the Applicant wrote to the Secretary of the Geneva Joint Appeals Board (“JAB”) to request a suspension of action. On 25 February 2004, the JAB recommended to the Secretary-General to reject the Applicant’s request for suspension of action. The Secretary-General accepted the said recommendation the following day.

21. On 10 March 2004, the Applicant provided the Administration with a medical certificate.

22. On 24 March 2004, the Director, DHRM, informed the Applicant of the High Commissioner’s decision to appoint her as Chief of Mission in Turkmenistan.

23. The Applicant did not take up her functions because she was placed on sick leave from 28 April 2004 until 31 July 2004. As of that date, she remained on special leave with full pay until her retirement on 30 June 2008.

24. On 11 May 2004, the Applicant lodged an appeal with the Geneva JAB.

25. On 6 July 2004, the Applicant submitted a request to the Special

special leave with full pay on SIBA status flowed from the proper exercise of the Secretary-General's discretionary authority.

27. By letter dated 14 July 2006, JAB informed the Applicant that its report had been sent to the Secretary-General.

28. By letter dated 19 December 2006, which the Applicant says she never received, the Under-Secretary-General for Management forwarded to the Applicant a copy of the JAB report and informed her of the Secretary-General's decision to follow the JAB recommendation and not to take any further action in the case.

29. On 27 September 2007, Counsel for the Applicant informed JAB that neither he nor his client had received the JAB report and the Secretary-General's decision on the said report. That same day, the JAB Secretary forwarded them to Counsel for the Applicant.

30. By letter dated 16 October 2007, the Applicant informed the former United Nations Administrative Tribunal of her intention to contest the Secretary-General's decision and first asked that the Tribunal rule on the admissibility of her case, given the delay with which she had received the Secretary-General's decision.

31. The Applicant presented a medical certificate for the period from 3 December 2007 to 29 February 2008, which was extended until 31 March 2008.

32. By letter dated 6 December 2007, the Administrative Tribunal informed the Applicant that if an appeal was lodge()4(-6(a)57..8()5.26Unde

35. On 12 March 2009, after having requested and received three extensions from the Administrative Tribunal, the Respondent submitted his response to the appeal. The said response was forwarded that same day to the Applicant who, after having requested two extensions, submitted

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appoint her without consultation as Chief of Mission in Turkmenistan was
contrary to UNHCR practice not to reassign staff members to a a

b. The decision to remove the Applicant from her post in Budapest is neither a disguised disciplinary measure nor a suspension, but rather a management decision in order to improve the functioning of the service pursuant to the discretionary power conferred on the Secretary-General under regulation 1.2(c) of the Staff Regulations in force at the time and recognized by the case law of the former UN Administrative Tribunal;

c. The Applicant was fully informed of the problems encountered with regard to relations between the UNHCR Representation in Hungary led by the Applicant and RSUB, which was housed on the same premises but was under the direct authority of the Deputy Director, RBE, in Geneva. The Director, RBE, took several initiatives to help the Applicant resolve the situation, to no avail. On the contrary, rather than using her position to reduce existing interpersonal tensions, the Applicant aggravated the situation by signing a petition against the Senior Regional Programme Officer;

d. The decision to remove the Applicant from her post respected the principles of due process because she had every opportunity to submit comments as the events which led the Administration to take the impugned decision unfolded. For example, the Applicant was able to submit her observations on the note prepared by the Director, RBE, after their meeting on 29 January 2004;

e. The Applicant's allegations that the decision to remove her from her post was only based on rumours and improper motives and constituted a *détournement de pouvoir* have not been established;

f. The placement of the Applicant on special leave with full pay as SIBA is the legal status for staff members who have to leave their posts before being reassigned to a new post, and was in accordance with UNHCR procedures and practices. This measure neither violated the rights

- g. Subsequently, it was difficult to find a new post for the Applicant for several reasons: (i) her personal situation had enabled her to obtain an exception to the UNHCR staff rotation policy and only apply for posts at Headquarters and elsewhere in Europe, making it difficult to find a suitable position; (ii) she had been placed on sick leave status from 28 April to 31 July 2004; (iii) she had primarily applied for D-1 level posts, further limiting her chances of obtaining a post; (iv) she had stopped applying in March 2007;
- h. All of the Applicant's candidatures had been fairly and duly considered, but regrettably, she was not found to be the most suitable candidate for any of the posts. Taking into account that the Applicant was only a few years short of her mandatory retirement age, she was offered voluntary separation, which she refused;
- i. The Applicant did not suffer any financial loss as a result of her placement on special leave with full pay as SIBbepphss1be3(c)4.3(a)4.u(h)savech

first, she was removed from her post of UNHCR Representative in Hungary, and second, she was placed and kept on special leave with full pay.

46. The Tribunal therefore only has to rule on the legality of these two decisions.

47. The Tribunal considers first of all that the Applicant's request for documents to be produced in her case can only be rejected, given that the said documents are either non-existent or inconclusive.

automatically implied a working relationship between the Applicant and the RSUB Senior Regional Programme Officer. However, it is clear from the evidence on file that the working relations between these two staff members deteriorated rapidly.

53. In March and April 2003, the Director, RBE, asked the Applicant to provide him with an assessment of the problems encountered. In July of that same year, this same Director suggested involving the Mediator, which the Applicant refused to do. In October 2003, the Senior Administrative Officer, RBE, undertook a mission to Budapest to clarify the respective responsibilities of the Representation and RSUB; then on 3 and 4 November 2003, the Director, RBE, travelled to Budapest to review management problems between the Applicant and RSUB. Finally, on 19 January 2004, the Director forwarded his mission report to the Applicant. In that report, four options were proposed to resolve the conflict in Budapest, one of which was a change of Representative.

56. Nor can the Applicant hold that the impugned decision constitutes a disguised suspension pending investigation or disciplinary proceedings, given that the decision to remove

60. Notwithstanding, whereas the impugned decision is not a disciplinary measure, the said decision was taken based on the personal circumstances of the Applicant and could only have been lawfully taken if she had had an opportunity to submit her views, which the Applicant denies she was given.

61. Yet in March 2003, the Applicant was informed of problems between UNHCR staff members stationed in Budapest and had an opportunity to express her views on those difficulties on several occasions throughout 2003. Subsequently, on 19 January 2004, the Director, RBE, forwarded to the Applicant his report of 9 January 2004 in which, among the four options envisaged to resolve those problems, only two were retained, including the appointment of a new UNHCR Representative in Budapest. Even though she was not explicitly asked to do so, nothing prevented the Applicant from submitting her written observations on that report which, moreover, she was asked to come to Geneva to discuss. On 29 January 2004, the Applicant thus had a meeting with the Director, RBE, in the course of which she was informed of his decision, taken in consultation with the High Commissioner, to remove her from her post. Subsequently, she had an opportunity to comment on the note for the record on that meeting.

62. Thus, contrary to which the Applicant claims, she had an opportunity, prior to the date on which the impugned decision was taken, to present her observations on her possible removal from her post and on the grounds for the said decision.

63. It follows that the Applicant has failed to establish the illegality of the decision to remove her from her post of UNHCR Representative in Hungary.

With regard to the legality of the decision to place her on special leave

pay if he considers such leave to be in the interest of the Organization;

(ii) Special leave is normally without pay. In exceptional circumstances, special leave with full or partial pay may be granted;

65. It is clear from the above-cited rule that placing a staff member on special leave with full pay was not illegal as such.

66. However, it is also clear from the rule in question that, even though it is used by UNHCR to justify the payment of staff members' salary on SIBA

terms of the mandatory staff rotation policy. He further refers to factors specific to the Applicant, namely, first of all her relatively high grade and the fact that she was nearing retirement age, which made it more difficult to find her an assignment; second, the fact that until September 2005, she had benefited from an exception to the UNHCR staff rotation policy which had enabled her to apply only for posts at Geneva Headquarters and elsewhere in

72. Likewise, the former UN Administrative Tribunal, in its judgment No. 1411 of 25 July 2008 concerning a staff member at D-1 level placed on special leave with full pay as SIBA by UNHCR for over three and a half years, had deemed that situation unacceptable.

With regard to the damage suffered and the amount of compensation

73. The Tribunal must compensate the damage suffered by the Applicant flowing from the illegality committed by keeping her on special leave with full pay as SIBA for more than four years.

74. As for the material damage suffered, the Applicant, who received full pay for the entire period, merely points out that during the said period, she received a lower post adjustment than the one she should have received, given that she received post adjustment at the rate applicable to Budapest whereas she was living in France. The Tribunal notes that the Applicant, who had contested the post adjustment rate with her Administration, did not follow up the Administration's refusal on 18 May 2004 to grant the post adjustment corresponding to her place of residence. The Tribunal therefore

receiving any serious job offers from UNHCR, became increasingly anxious as time passed and her retirement date came closer. Finally, the Applicant explained at the hearing that owing to the long period of inactivity, she had lost all of her contacts at UNHCR and her desire to work in the humanitarian sector after she retired had been negatively affected.

77. In the light of the foregoing, the Tribunal sets the compensation for moral damage at USD15,000.

Payment of legal costs

78. Finally, the Applicant claims compensation for her legal costs.

79. Article 10, paragraph 6 of the Statute of the Tribunal allows it to award costs against a party that has manifestly abused the proceedings before it. In the case at hand, the Tribunal did not find any abuse of proceedings by the Respondent, and there is therefore no need to award costs against him pursuant to the aforesaid article 10, paragraph 6.

80. Moreover, the Tribunal recalls that it stated in its judgment UNDT/2010/130, *Applicant*:

82. However, as the applicant filed his application with the former United Nations Administrative Tribunal (UNAT), it must be determined whether, under the old internal justice system, he was entitled to compensation for his legal costs.

83. The practice of the former UNAT was to award applicants costs only in exceptional circumstances. In its Judgement No. 237, *Powell* (1979), UNAT stated: “As regards costs, the Tribunal has declared in its statement of policy contained in document A/CN.5/R.2 dated 18 December 1950 that, in view of the simplicity of its proceedings, the Tribunal will not, as a general rule, grant costs to Applicants whose claims have been sustained by the Tribunal. Nor does the Tribunal order costs against the Applicant in a case where he fails. In exceptional cases, the Tribunal may, however, grant costs if they are demonstrated to have been unavoidable, if they are reasonable in amount, and if they exceed the normal expenses of litigation before the Tribunal.”

81. In this instance, as in the above-mentioned case, the Tribunal does not see any reason to depart from the practice of the former UN Administrative Tribunal and refuses to award costs in favour of the Applicant.

Decision

82. In view of the foregoing, the Tribunal DECIDES:

- 1) The Respondent is ordered to pay the Applicant USD15,000 as compensation for the moral damage suffered due to the latter being kept on special leave with full pay for four years and four months;
- 2) The above-mentioned compensation shall bear interest at the rate of five per cent per annum as from 60 days following the date on