
Case No.: UNDT/NY/2009/120
Ju

Original: English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

GOODWIN

v.

SECRETARY-GENERAL

Introduction

1. In his substantive application before the Tribunal, the Applicant contested the Respondent's decision to impose, remove and again reinstate an administrative reprimand issued to him upon the recommendation of the Joint Disciplinary Committee ("JDC"), following its review of allegations of misconduct made against him. The Applicant also challenged his removal from his former post and reassignment. On 21 June 2011, the Tribunal issued *Goodwin* UNDT/2011/104 on liability, finding that the decision to withdraw the reprimand and refer the matter to the JDC for advice and further action breached the Applicant's terms of appointment. The Tribunal found that the decision of the Secretary General to close the case and impose administrative action was final and conclusive, and in subsequently withdrawing the reprimand and referring the matter to the JDC, the Respondent was in breach of the Organization's rules, as well as general principles of law. This finding was made *inter alia*, on the principle that the office of the Secretary-General was *functus officio*, that the Respondent had offended the rule against double jeopardy, and breached the rule against finality.

2. However, the Tribunal found that the initial imposition of the reprimand was not improper, although the wording of the reprimand was inappropriate. It also held that the decision to transfer the Applicant from his functions at the United Nations Advance Mission in Sudan ("UNMIS") was a disguised disciplinary measure which was in breach of the Applicant's terms of appointment.

3. The instant Judgment addresses the outstanding matter of compensation in view of the Tribunal's finding on liability in *Goodwin* UNDT/2011/104.

Procedural background

4. *Goodwin* UNDT/2011/104 contained the following orders:

66. The Respondent is to replace the letter of 16 January 2007 with an appropriately worded reprimand ...

67. By 22 July 2011 the parties shall confer on the appropriate sum of monetary compensation to be awarded to the Applicant, which may include compensation for the decisions to transfer him from his functions at UNMIS, and to withdraw the reprimand and refer the matter to the JDC, and the resulting delay.

68. By 29 July 2011 the Applicant shall file and serve a statement confirming whether the issue of compensation has been settled, failing which settlement the Tribunal shall give further directions as necessary.

5. On 15 September 2011, following the granting of extensions of time to comply with the above orders, the Applicant informed the Tribunal that the parties had been unable to reach a settlement.

6. On 8 December 2011, the Tribunal held a case management hearing on the question of remedies. The Applicant participated by telephone. As a result of that hearing, the Applicant was ordered to “file a submission as to the compensation sought and the evidence he wishes to submit on the issue of compensation, including a summary of the Applicant’s testimony” if he was going to be called to give evidence. The Respondent was given the opportunity to file a response (Order No. 293 (NY/2011) dated 9 September 2011).

7. A substantive hearing on the issue of compensation was held on 16 December 2011. The Applicant participated by video-conference.

e. The Tribunal should not be asked to draw speculative assumptions and conclusions about the Applicant's possible economic loss. In the absence of evidence establishing economic loss, no compensation should be awarded (*Klein* UNDT/2011/169, paras. 25-26);

f. The Applicant is not entitled to compensation for a breach that did not cause him any loss or injury (the United Nations Appeals Tribunal ("UNAT") in *Sina* 2010-UNAT-094, *Abboud* 2010-UNAT-100);

g. The Applicant is not entitled to compensation for delays related to the processing of his case as he did not suffer emotional distress as a result of the delay and he has not proved that he suffered damages to his reputation or career prospects as a result of the delay.

Consideration

The scope of the present Judgment

11. In *Goodwin* UNDT/2011/104 on liability, the Tribunal dealt with the issue of the initial reprimand being reinstated after referral to the JDC, and with the Applicant's transfer from UNMIS. Accordingly, in the present Judgment, the Tribunal will only determine the amount of the compensation, which the Applicant is to be awarded for the breach of his rights, as defined in UNDT/2011/104.

Applicable legal principles guiding the award of compensation

13. The fundamental purpose of compensation is to place an aggrieved party in the position he or she would have been in but for the breach in contractual obligations (see, for instance, the judgments of the United Nations Appeals Tribunal (“UNAT”) in *Mmata*)

Indeed, at the hearing, Counsel for the Applicant conceded that the professional salary scale was the same for both fields. The Tribunal also notes that there is no right to promotion and in any case, the Applicant was eventually promoted.

Non-pecuniary damages

17. In order to avoid duplication of remedies in connection with another pending case, the Applicant is no longer claiming specific compensation for emotional distress. Rather, he limits his claim for non-pecuniary damages to the harm suffered to his general reputation, the delays incurred, and the due process violations.

18. The Tribunal finds that being investigated for misconduct and having been issued with an administrative reprimand is more than likely to have negatively impacted the Applicant's general reputation and wellbeing. However, the fact that the Applicant acknowledged and was found responsible for some lack of managerial oversight is a factor which must be taken into account in the assessment of compensation.

19. However, the Tribunal is convinced from the submissions of the Applicant and in light of all the circumstances of the case, including the inappropriate content of the initial reprimand and the protracted period of time which it took to resolve the matter, that the Respondent's breaches did attach some "stigma" to the Applicant which negatively affected his general reputation and wellbeing, and therefore also his career and life in the broader sense. The Tribunal considers that this damage went beyond that which would have been caused had an appropriate reprimand been issued within a reasonable period of time, and the Applicant should be compensated for this. Considering the Applicant's circumstances, including his career path and the many years he has been in service, the Tribunal recognises that the breaches committed by the Respondent have had a negative impact on his general reputation and wellbeing.

20. Whilst it is recognised that it is for the Applicant to substantiate the harm suffered as a result of delays and due process violations, and that damages may not be exemplary or punitive, the Applicant was subjected to an ex

Conclusion

23. The Respondent shall pay the Applicant USD30,000 as compensation for the harm caused to the Applicant's career prospects and reputation as exacerbated by delay. This payment should be made within sixty calendar days of the date this Judgment becomes executable, failing which interest is to accrue to the date of payment at the US Prime Rate applicable as at the date of expiry of this period. If the sum is not paid within the 60-day period, an additional five per cent shall be added to the US Prime Rate until the date of payment.

(Signed