UNITED NATIONS DISPUTE TRIBUNAL	Case No.	UNDT/NBI/2011/071
	Judgment No.	UNDT/2012/201
	Date	19 December 2012

Before:

Introduction

1. The Appellant was employed by the Respondent as a Senior Accountant in the Finance Department, since 2007. On 2 June 2011 the Respondent terminated the Appellant's employment. The Appellant, who was a member of the NDMW, lodged a grievance with the Respondent's Human Resources Department, which was referred to the Labour Commissioner for conciliation. The Labour Commissioner issued a certificate of non-settlement on 5 August 2008.[1] The Appellant then lodged a complaint with the Labour Court alleging that the Respondent had unfairly dismissed him. The Appellant's complaint was heard by the Labour Court on 2 and 3 March 2009. The Appellant's complaint was dismissed by the Labour Court on 5 August 2008.

2. The Appellant has appealed against the judgment of the Labour Court on the following grounds: (i) that the Labour Court erred in finding that the Appellant had failed to prove that he had been unfairly dismissed; (ii) that the Labour Court erred in finding that the Respondent had complied with the provisions of the Labour Act; and (iii) that the Labour Court erred in finding that the Appellant had failed to prove that he had been unfairly dismissed.

Facts and Procedural History

3. The Appellant was employed by the Respondent as a Senior Accountant in the Finance Department, since 2007. On 2 June 2011 the Respondent terminated the Appellant's employment. The Appellant, who was a member of the NDMW, lodged a grievance with the Respondent's Human Resources Department, which was referred to the Labour Commissioner for conciliation. The Labour Commissioner issued a certificate of non-settlement on 5 August 2008.

[1] The Appellant's complaint was heard by the Labour Court on 2 and 3 March 2009.

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the Land Court for the following order:

IS/2008/5.

8. On 7 July 2011, the Respondent lodged

12. On 26 October 2011, the Applicant delivered a Notice of Motion dated 22 December 2011.

13. The Respondent filed an Answering Affidavit on 6 March 2012. The Applicant filed a Replying Affidavit on 16 April 2012.

Issues:

14. The issues to be determined are:

i whether the Applicant has made out a case for the relief sought in terms of Section 18(4) of the Companies Act 71 of 2008;

ii whether the Applicant has made out a case for the relief sought in terms of Section 18(4) of the Companies Act 71 of 2008 read with Section 163 of the Companies Act 61 of 1973;

iii whether the Applicant has made out a case for the relief sought in terms of Section 5.18(a) of the Companies Act 71 of 2008 read with Section 163 of the Companies Act 61 of 1973.

18. [illegible] Ap[illegible] [illegible] the D[illegible] ([illegible]) [illegible] 23 [illegible] 22 [illegible] 2011. D[illegible] [illegible] DS[illegible] ([illegible]) [illegible] 23 [illegible] 2011 a[illegible] 22 [illegible] 2011, [illegible] 31 [illegible] 2011, [illegible] A[illegible] DS[illegible] (“ASG-DS”) [illegible] A[illegible] 6 Ap[illegible] 2011, DS[illegible] A[illegible] [illegible] ND[illegible] [illegible] /2008/5. A[illegible] DS[illegible] [illegible] ND[illegible] [illegible]

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24. [illegible] 28 August 2011 [illegible] 22 December 2011, [illegible] Ambassador [illegible] [illegible] 19 December 2011, [illegible] [illegible] [illegible] [illegible] [illegible] *persona non grata* on 18 December 2011. [illegible]

32. [illegible] 5.18, [illegible] 5.20, [illegible]

33. [illegible] [illegible] [illegible]

Whether the Respondent violated the Applicant's rights by not taking disciplinary action against the Complainants after SIU concluded in its December 2009 IR that their allegations were unfounded

34. [illegible]

35. [illegible]

Considerations

36. [illegible]

41. [illegible] 2009 [illegible] 46 [illegible]

42. [illegible] ST/AI/371 [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

43. [illegible] *Abboud* 2010-UNAT-100, [illegible] [illegible] [illegible] [illegible]

44. [illegible] [illegible] [illegible] [illegible] ST/AI/371 [illegible]

[illegible] ST/SGB/2008/5. [illegible]

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49. [illegible]/2008/5, [illegible]

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57. [illegible] the Applicant [illegible] the Respondent [illegible] the Applicant [illegible] the Respondent [illegible] the Applicant [illegible] section 5.18(a) of the [illegible] 2008/5. As a result of the [illegible] the Applicant [illegible] *Adorna* [illegible] the Respondent [illegible]

58. [illegible] the Applicant [illegible] section 5.18(a), [illegible] 7 July 2011. The Applicant [illegible] the Respondent. After [illegible] the Respondent [illegible] 5.18(a) of the [illegible] 2008/5. [illegible] the Respondent [illegible] 2011, the Respondent [illegible] in terms of section 5.18(a) [illegible]

Whether the Applicant's credibility and professional reputation were damaged as a result of the 2009 complaints and investigation? If so, is she entitled to compensation?

59. [illegible]

60. [illegible]

Conclusion

61. [illegible]

[4] [illegible]

Judgment

62. [illegible]

63. [illegible]

64. [illegible]

(Signed)

[illegible]

[illegible]

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