
UNITED NATIONS DISPUTE TRIBUNAL

Case Nos.: UNDT/NBI/2019/042
UNDT/NBI/2019/065
Judgment No.: UNDT/2020/076
Date: 28 May 2020
Original: English

Before: Judge Eleanor Donaldson-Honeywell

Registry: Nairobi

Registrar: Abena Kwakye-Berko

ORIES

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Introduction and Procedural History

1. The Applicant is an Associate Security Officer with the United Nations Mission in Iraq (UNAMI). He serves on a fixed term appointment at the P-2 level. He filed applications on 6 April 2019 and 18 June 2019 challenging of his request for a transfer to a different duty station on medical grounds (Case No. UNDT/NBI/2019/042); and (ii) his failure to afford the Applicant the proper duty of care by continued delay and the refusal of his transfer request (Case No. UNDT/NBI/2019/065), respectively.

2. By Order No. 066 (NBI/2020), dated 9 April 2020, the Tribunal granted the Applicant

supporting his request to be reassigned. The Applicant has challenged this decision before the UNDT.

to reassign you to a duty station different than Erbil on medical grounds [emphasis added].

25. The information available at that point to the Respondent was an MSD sick leave form dated 10 September 2018 wherein early medical retirement was recommended by the A doctor instead of a return date for work. The prognosis was stated as poor for the Applicant. By medical report dated 17 September 2018, the same doctor explained that sick leave with a view to permanent retirement was required rather than a return to work while being treated.

26. The Respondent makes a strong case to challenge the temporal and material receivability of the application.

i. *Ratione materiae* there was no decision from which the Applicant suffered adverse legal consequences. The claim regarding negligence is not receivable unless subject to a decision by the Secretary-General and thereafter management evaluation. The Applicant contends that the Organization failed to recognize its proper duty of care to adopt measures to protect his health and safety as a staff member. However, the Applicant did not submit a claim for negligence to the Secretary-General for consideration. As such, there is no decision by the Secretary-General on such a claim to be reviewed by the Dispute Tribunal.

ii. *Ratione temporis* the decisions complained of were refusals to reassign the Applicant and lack of proper treatment dating back to 2014. At that time, the

Applicant, who had recovered from his physical injuries and was back at work, be assigned to another duty station. Eventually in 2016, a decision was made to move the Applicant but it was later revoked. The Applicant did not challenge that decision at that time. Instead it was not until 2019, by way of these two applications, that

requests to his Mission in Erbil Iraq refusing to reassign him to a different duty management evaluation or application to the UNDT in relation to either those prior requests dating back to 2014 or the decision in 2016 to stop a transfer that had been approved.

27. In so finding, I am guided by the appellate jurisprudence on the material and temporal receivability of applications.

28. In *Servas*, the United Nations Appeals Tribunal UNAT held that³

A staff member must be familiar with the Staff Rules and understand her obligation to act in conformance with those rules. This means that a request for management evaluation must be submitted *prior to* bringing an application before the Dispute Tribunal. As we have noted many times, the requirement of management evaluation assures that there is

without the need for judicial intervention.

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merit to the application. There is no staff rule or regulation mandating a right to reassignment on medical grounds. In any event there was no basis for the transfer from the documentation provided by the A of

⁴ that the Applicant was cleared

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- vi. When the application was filed, there was no pending decision refusing to assign the Applicant to a post at a duty station other than where he was attacked. This is so as it is acknowledged in the application that the MEU had advised on 24 May 2019, just one month after the alleged decision being challenged, and before the filing of this application, that the Applicant would be reassigned to a duty station other than Erbil. Although the Applicant had on 17 April 2019 indicated an interest in the Baghdad posting, he later heard on 21 April 2019 that the position was awarded to another person, there was no evidence in his application for a finding that the posting should have been awarded to him and not to the other person.

32. The Respondent argues that this application, too, cannot succeed on the merits. I agree. If, in the award of the Baghdad posting to another person there was an implied decision against re-assignment of the Applicant as alleged, it was lawful. The Applicant has no rule-based right to reassignment on medical grounds. Under staff regulation 1.2(c), the Respondent has the authority to assign a staff member to any of the offices of the United Nations. In so doing he must seek to ensure that necessary safety and security arrangements are made for staff carrying out their assigned duties. The question as to whether the Respondent has properly carried out this authority to assign duties can only be whether his discretion was properly exercised. In the instant case, the Applicant has not established any basis for a finding that the Respondent exercised the discretion in a manner that was unlawful, procedurally incorrect or irrational in either taking into account irrelevant matters or failing to consider relevant mprocnd9tA3b[(p)-ailing to con

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be posted to a duty station other than Erbil. This clearance came on 4 June 2019, and the Respondent has honoured the promise to re-assign the Applicant.

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requests for a re-assignment. The Applicant has failed to show that this delay even if it occurred is a matter to be taken into account in the instant proceedings. Instead it was the Applicant who was entitled, if he felt aggrieved since 2016 by the failure to re-assign him to have sought redress through the appropriate channels. He failed to do so; although it is on record that he has had the assistance of Counsel as far back as 2015, when he submitted his claim before the ABCC. The timing of the re-assignment in 2019 was based on the time taken by the Applicant to be cleared to return to work. There has been no delay for which damages can be awarded.

39. The Tribunal is not persuaded by the argument that even though the Applicant was declared medically unfit by his own doctor he should have been afforded the entitlements of a person with disabilities and as such al Tmshould hav-89091202.1 135.38 792 (e)4(d)-9()-

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(Signed)

Judge