

Judgment No. 2022-UNAT-1200



Counsel for Appellant: Omar Yousef Shehabi, OSLA

Counsel for Respondent: Noam Wiener

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2022-UNAT-1200

unlikely that these grievances could result in any disciplinary action. In the circumstances, OIAI will not be taking any further action; accordingly, it has been referred to UNICEF's Executive Director for her attention and any action deemed appropriate.

6. On 3 October 2019, Ms. Dettori requested management evaluation of the OIAI's decision to not take any action on her complaint of abuse of authority.

7. On 7 November 2019, in response to her management evaluation request, UNICEF's DED [redacted] for Management informed Ms. Dettori that she had rescinded the OIAI's decision of 25 September 2019 to not investigate her complaint, and remanded her complaint to the OIAI for a "new and thorough assessment" by officials other than those who had previously dealt with her complaint. The DED [redacted] for Management determined that the OIAI had violated section 5.14 of CF/EXD/2012-007 Amend.1 by deciding to close Ms. Dettori's case without interviewing her. The DED [redacted] for Management also determined that the OIAI had "unduly delayed in assessing [Ms. Dettori's] complaint", for which Ms. Dettori was awarded one-month net base salary.

8. On 5 February 2020, Ms. Dettori filed an application with the Dispute Tribunal to contest the decision to not take any action on her report of abuse of authority against the DED for Programmes. DE0(O)0.6 (kTJ0.00.41 -1.7 TJ0.00r)40.42-2.8 48 f-0.6ED 27.044 0 hte(d)3ng ht

to reassign her to Geneva, effective 1 October 2020. In Ms. Dettori's view, the reassignment decision was "intertwined with ... UNICEF's decision not to investigate [the DED for Programmes]". She sought leave to amend her application also in order to identify three senior UNICEF staff members by name and request that the Dispute Tribunal refer them for accountability, in addition to the named UNICEF official in her original UNDT application.

10. On 11 December 2020, the Dispute Tribunal issued Order No. 196 (NY/2020), in which it informed the parties that, as the case was fully briefed, the UNDT would proceed to adjudicate it based on the papers in the case file. The Dispute Tribunal did not refer to Ms. Dettori's motion of 29 September 2020 for leave to amend her UNDT application.

11. In Judgment on Receivability No. UNDT/2020/213 dated 21 December 2020, the Dispute Tribunal referred the Chief of Investigations of OIAI, but not the ED or other senior staff of UNICEF, to the Secretary-General for possible action to enforce accountability for his improper handling of Ms. Dettori's complaint. The Dispute Tribunal found the manner in which UNICEF had handled Ms. Dettori's complaint to be in violation of the UNDT Rules of Procedure.

THE U

18. Ms. Dettori also submits that the Dispute Tribunal erred on a question of fact

to show why the UNDT did not have sufficient evidence to rule on the question of receivability.

23. The Secretary-General further submits that, contrary to Ms. Dettori's claim, the impugned Judgment is not a summary judgment. It is a regular judgment on the receivability of her application.

24. The Secretary-General maintains that Ms. Dettori's argument that the UNDT had an obligation to investigate her claims that the decision to not investigate her supervisor was tha2 (l)-4.37 (a2 (l)-4dj-3.t th)-902 0]TJO.003 0 TdTO.6 (i)-]TJO.003 0 3 0 Td(-)Tj-0.35Twc

32. The purpose of Article 10(8) of the UNDT Statute and Article 9(5) of the UNAT Statute is to give the Tribunals a formal tool to make substantial breaches of procedure and due 79.2 39TTm()TjETEMC /Artil Tw -13.1 (al)0.7ce2 371.5ss (r)-0. riTw -.3 g[(to)-hTw -13.t uo6

[a] party wishing to submit evidence that is in the possession of the opposing party or of any other entity may, in the initial application or at any stage of the proceedings, request the Dispute Tribunal to order the production of the evidence[...]

is without merit. In her 29 September 2020 motion, Ms. Dettori did not request the UNDT to order the production of evidence. Instead, she requested that the UNDT grant leave to amend her application so as to name several senior UNICEF staff members whom “the [Dispute] Tribunal [should] refer for accountability, and [...] specify the basis for the

UNDT to the Secretary-General, and the Secretary-General is vested with the discretionary power to determine a course of action to adopt or not to adopt as sequel to the referral.

Judgment

45. Ms. Dettori's appeal is dismissed, and Judgment No. UNDT/2020/213 is affirmed.

Original and Authoritative Version: English

Dated this 18th day of March 2022.

Judge Knierim, Presiding
Hamburg, Germany

Judge Sandhu
Vancouver, Canada

Judge Murphy
Cape Town, South Africa

Entered in the Register on this 21st day of April 2022 in New York, United States.

Weicheng Lin, Registrar