

JUDGE SOPHIA ADINYIRA , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by the Secretary-General of the United Nations against Judgment No. UNDT/2013/111, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi in the case of *Goodwin v. Secretary-General of the United Nations* on 30 August 2013. The Secretary-General appealed on 25 October 2013, and Mr. Craig Godwin filed his answer and cross-appeal on

Department of Peacekeeping Operations is faced and the burden this is putting on its functioning, with carrying out a review of the management structures of the Department, while taking into account the Security Council mandates and existing recommendations formulated on previous occasions by the Office of Internal Oversight Services and the Board of Auditors and paying specific attention to the interaction, coordination and cooperation of the Department with other Secretariat departments and offices, including but not limited to the Department of Political Affairs, the Department of Public Information, the Office of Programme Planning, Budget and Accounts and the Department of Management, as well as the relevant funds and programmes, and to report thereon to the General Assembly at its sixty-first session.

... Between September and December 2005, [the Office of Internal Oversight Services (OIOS)] conducted a management audit of the Department of Peacekeeping

3. I wish to emphasize that your placement on special leave with full pay is a purely administrative measure, which is not disciplinary in nature and is taken to assist the Organization in conducting a full assessment of the situation.

... Prior to the Applicant's placement on [special leave with full pay (SLWFP)], he was provided with a copy of the Draft OIOS Report and allowed to submit comments, which he did in January 2006. However, according to the Applicant his comments were not included in the formal DPKO reply to the draft OIOS Report and subsequently PTF initiated an investigation into the allegations relating to his role in UNMIS.

... Following a management audit of DPKO and the Department of Management (DM), OIOS issued its final report on 19 January 2006 (Final OIOS Report). The same day, an Associated Press story was published which named the Applicant as well as the seven other staff members as the staff placed on SLWFP.

... On 30 January 2006, the then Secretary-General disseminated a letter on procurement activities to United Nations staff that informed, *inter alia*, of an OIOS investigation into a number of cases of possible fraud, abuse and waste that had been

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5. The UNDT erred in concluding that the Organization effectively condoned the unauthorized dissemination of information and basing the award of compensation, in part, on this conclusion. It is clear from both the media reports and the internal broadcasts, that the Organization had not authorized the release of any information about the names of the eight staff members. The UNDT explicitly acknowledged that the dissemination of the names was “unauthorized”. The UNDT erred in finding fault with the Organization for not taking actions that would, in any event, have been futile and for awarding compensation.

6. The UNDT erred in failing to take into account the compensation already awarded for harm to Mr. Goodwin’s reputation based upon the same injury and the same set of facts. To the extent that Mr. Goodwin’s reputation was harmed by the PTF investigation, the Secretary-General contends that each discrete action taken in the context of the same disciplinary case cannot give rise to separate grounds for compensation when the subject of the injury - Mr. Goodwin’s reputation - remained the same. The cumulative effect of the impugned Judgment and Judgment No. 2012/126³ is that Mr. Goodwin has been doubly compensated for the same harm to his reputation and career.

7. The Secretary-General requests that the Appeals Tribunal reduce the award of compensation accordingly.

Mr. Goodwin’s Answer

8. The UNDT did not err in awarding compensation in the amount of two years’ net base salary. Contrary to the Secretary-General’s contention, the Appeals Tribunal Judgment in *Cabrera* cannot be relied on as a precedent since that case can be distinguished on several

that he was denied the opportunity to present his pleas, the Secretary-General contends that he could have presented his arguments on compensation before both the former Administrative Tribunal and the UNDT. Under the Statutes of both Tribunals, a staff member bringing a claim is entitled to make pleadings on compensation. Mr. Goodwin is now precluded from introducing new issues which he had not previously raised. In any event, the UNDT considered his claims of specific financial losses and emotional stress and properly found them to be without merit.

18. The Secretary-General contends that Mr. Goodwin fails to establish that the

- a) The UNDT erred in awarding excessive compensation in light of the Appeals Tribunal's Judgment in the *Cabrera* case;
- b) The UNDT erred in concluding that the Organization effectively condoned the unauthorized dissemination of information and basing the award of compensation, in part, on this conclusion; and
- c) The UNDT erred in failing to take into account the compensation already awarded for harm to Mr. Goodwin's reputation based upon the same injury and the same set of facts.

Did the UNDT err in awarding excessive compensation in light of the Appeals Tribunal's Judgment in the Cabrera case?

23. The Secretary-General submits that Mr. Goodwin was placed on SLWFP under the same circumstances as Mr. Cabrera and six others in January 2006 as a result of the ongoing PTF

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resulted in damage to Mr. Goodman's reputation and violated his rights. For clarity, we quote the relevant portion of the UNDT Judgment:

... Accordingly, this Tribunal holds that the intense media coverage adversely impacted the Applicant's reputation because the public nature of the Organization's statements and the external media reports resulted in the Applicant being associated with fraud, abuse, mismanagement and other serious wrongdoing and as a result of this association, his career suffered palpably. The record shows that he was not restored to the post of UNMIS Chief Aviation Officer at the P-5 level even after the Respondent decided not to pursue disciplinary proceedings against him.

... The Tribunal rejects the Respondent's submission that the Applicant suffered no harm because he was exonerated by the subsequent PTF investigation. This was a very hollow victory indeed in light of the fact that there is no evidence in the record showing that the Applicant's exoneration was acclaimed as loudly and publicly in the external and internal United Nations media sources as was the pronouncement of his suspension in response to the findings of the OIOS report. In the absence of any public dissemination, the Tribunal finds it hard to accept that the Applicant's subsequent exoneration mitigated and/or eliminated the damage to his reputation. Unfortunately, disabusing people of negative perceptions is not a task that can be achieved by silence when the erroneous facts were loudly proclaimed.

35. The Appeals Tribunal does not find any error of law or fact in the findings of the UNDT as would entitle us to interfere with the computation of damages on this ground of appeal.

36. The UNDT has discretion to determine the amount of damages awarded taking into account the circumstances of each case.¹⁵ In *Lutta*, we stated that we will respect the opinion of the trial judge as to how to determine damages in each particular case.¹⁶ The trial judge is best placed to assess the nature and evidential value of evidence placed before it by the parties to justify its findings and award of damages.¹⁷

37. In the absence of a compelling argument that the UNDT erred on a question of law or fact, we will not lightly interfere with the computation of damages by the UNDT. Accordingly, this ground of appeal fails.

¹⁵ *Larkin v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-134.

¹⁶ *Lutta v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-117.

¹⁷ *Messinger v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-123.

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44. The Secretary-General contends that Mr. Goodwin could have presented his arguments on compensation before both the former Administrative Tribunal and the UNDT. Under the Statutes of both Tribunals, a staff member bringing a claim is entitled to make pleadings on compensation. Mr. Goodwin is now precluded from introducing new issues which he had not previously raised.

45. Taking a look at Mr. Goodwin's application to the former Administrative Tribunal of 20 February 2009,¹⁸ we note that in paragraph 8(e), Mr. Goodwin requested the former Administrative Tribunal "to award the Applicant additional exceptional compensation to be determined by the Tribunal for the actual, consequential and moral damage suffered by the Applicant as a result of the Tribunal's decision of 14 October 2009".

A delay, in and of itself, is not a manifest abuse of proceedings. In order to award costs against the Secretary-General, it was necessary for the UNDT to be satisfied on the evidence that, in causing the delay, the Secretary-General had “manifestly abused the proceedings”. The plain language of those words meant that before the UNDT could lawfully award costs against the Secretary-General, it was necessary to determine on the evidence that the delay was clearly and unmistakably a wrong or improper use of the proceedings of the court. Proof that the delay was frivolous or vexatious would have satisfied this requirement.²¹

49. We dismiss the claim for costs as the delay was caused by the attempt at settlement which failed.

Judgment

50. The appeal and the cross-appeal are dismissed. The UNDT Judgment is affirmed in its entirety.

²¹ *Bi Bea v. Secretary-General of the United Nations*

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