



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2010-094

**Sina
(Respondent/Applicant)**

v.

**Secretary-General of the United Nations
(Appellant/Respondent)**

JUDGMENT

Before:	Judge Mark P. Painter, Presiding Judge Jean Courtial Judge Inés Weinberg de Roca
Judgment No.:	2010-UNAT-094
Date:	29 October 2010
Registrar:	Weicheng Lin

Counsel for Respondent/Applicant: George G. Irving
Counsel for Appellant/Respondent: Melanie Shannon

JUDGE MARK P. PAINTER, Presiding.

Synopsis

1. The Dispute Tribunal (Dispute Tribunal or UNDT) found that Shkelqim Sina (Sina) had no legitimate expectation of renewal of his contract and that the non-renewal decision was based on proper grounds and not affected by irrelevant considerations. Nonetheless, he was awarded compensation for an alleged minor procedural defect by the Secretary-General in failing to timely notify him of a decision by the Advisory Board on Compensation Claims (ABCC) which had a direct impact on the non-renewal of his 300 Series Appointment of Limited Duration (ALD), and failing to timely notify him of a medical decision.

2. The Dispute Tribunal concluded that Sina did not prove that the omissions had any impact on him, his circumstances or his entitlements, and that he suffered no significant adverse consequences from the alleged breaches. The UNDT, however, awarded compensation of USD500, plus compensation equivalent to 19 days (the time between the decision not to renew and its communication to him) salary. But he was paid for those 19 days, justifying the UNDT's finding that he suffered no harm.

3. This Court will not approve the award of compensation when no harm has been suffered. While we agree with the UNDT that a staff member certainly has the right to be informed of administrative decisions affecting him, a few days lapse is inconsequential—and in this case it had no consequences whatever. And the trial court specifically found that no harm was suffered. (Perhaps it could have found differently, and in that event we would have a different issue.) We vacate only that portion of the UNDT judgment that orders payment to Sina.

Facts and Procedure

4. Sina was a staff member of the United Nations Development Programme (UNDP). He was employed from 23 August 2005 under a 300 series ALD contract as a Disbanding, Disarming, and Reintegration (DDR) Officer with UNDP in Kabul, Afghanistan. On 12 October 2006, there was an explosion in Sina's room in his residence, causing him severe injuries. The explosion was caused by a mortar shell which had been brought into the

residence. Sina was placed on sick leave, and he later submitted a claim for compensation under Appendix D to the Staff Rules with the ABCC.

5. A number of investigations into the cause of the explosion were carried out in 2006 and 2007, including by the Office of Audit and Performance Review (OAPR) and the Office of Internal Oversight Services (OIOS). On 21 December 2006, prior to the release of the findings of the OAPR, the Secretary-General decided not to renew Sina's contract as his position had become redundant. In February 2007, the Secretary-General "put aside" the decision of 21 December 2006 and, on an exceptional basis, extended Sina's contract from 27 February 2007 to 31 May 2007 pending the ongoing investigation and his ongoing medical treatment. Subsequent extensions were made pending the final determination of Sina's claim before the ABCC.

6. On 30 October 2007, UNDP informed Sina that, on the basis of the reports of the investigation, it concluded that "absent definitive evidence as to the origin of the explosion, no one could be held liable for it". On 8 April 2008, the Medical Services Division (MSD) concluded that Sina did not qualify for disability benefits and that he was fit for work, although it would not recommend that he return to Afghanistan. The report of the MSD was not provided to Sina.

7. The final extension of Sina's contract was for a month, to 31 May 2008. After meeting at the end of April, on 12 May 2008 the ABCC recommended that Sina's injuries and illnesses should be recognized as attributable to the performance of his official duties. The ABCC's recommendation was approved on behalf of the Secretary-General on 17 May 2008. UNDP was notified of the recommendation and the Secretary-General's decision on 27 May 2008. On 30 May 2008, the Secretary-General informed Sina of the ABCC's recommendation and notified him that the final extension of the contract lapsed on 30 May 2008.

8. On 30 October 2008, Sina challenged the decision not to renew his contract before the Joint Appeals Board (JAB). Following the introduction of the new system of internal justice from 1 July 2009, the application was transferred to the UNDT.

9. On 9 April 2010, the Dispute Tribunal issued Judgment UNDT/2010/060. The Dispute Tribunal found that Sina had no legitimate expectation of renewal of his contract and that the non-renewal decision was based on proper grounds and not affected by

irrelevant considerations. It also found that Sina was entitled to have been informed of the MSD's decision that he was considered to be fit for duty. As no significant adverse consequences followed from this breach, the Dispute Tribunal awarded nominal compensation of USD 500. The Dispute Tribunal also found that Sina was entitled to have been informed of the ABCC's recommendation immediately upon its occurrence, given its effect upon the expiry of his contract on 31 May 2008. There was a period of 19 days between the date on which the ABCC made its recommendation and the date on which Sina was informed of the recommendation. The Dispute Tribunal awarded compensation in the sum equivalent to the sum he would have been paid for those 19 days, had notice of the recommendation been given immediately upon its occurrence. But he was in fact paid for those days.

10. The Secretary-General filed an appeal against the UNDT judgment on 24 May 2010. Sina filed his Answer on 8 July 2010.

Submissions

Secretary-General's Appeal

11. The Secretary-General submits that the Dispute Tribunal erred in law and exceeded its competence in concluding that Sina was entitled to be informed of the MSD's determination. Sina does not have a procedural right to be informed of the MSD's determination under the Staff Regulations, Rules, or other administrative issuances. The Secretary-General argues that the Dispute Tribunal does not have the authority to prescribe a procedural obligation, as that authority lies with the Secretary-General. The Secretary-General also submits that the Dispute Tribunal erred in its reasoning concerning the existence of procedural right.

12. The Secretary-General further contends that the Dispute Tribunal erred in law in awarding compensation for the breach of the purported obligation to inform Sina of the MSD's determination as Sina did not prove that he suffered any loss. Sina did not present any evidence of damage or injury, nor did he claim pecuniary or non-pecuniary loss. The Dispute Tribunal concluded that Sina did not prove that the omission had any impact on him, his circumstances or his entitlements, and that no significant adverse consequences followed from this purported breach. The Secretary-General argues that the legal framework

governing compensation under the Statute of the Dispute Tribunal precludes the award of compensation.

13. The Secretary-General submits that the Dispute Tribunal erred in law in finding that the notification to Sina on 30 May 2008 of the expiration of his contract on 30 May 2008 was a procedural error. The Dispute Tribunal found that Sina had a legitimate expectation of renewal of his contract whilst the ABCC consideration was outstanding, and that Sina should have been immediately notified of the recommendation of the ABCC as he was entitled to know of the fulfillment of one of the prerequisites for his separation. The Secretary-General argues that the ABCC's recommendation had no effect until it was reviewed and either affirmed or rejected by him. This process was only completed by 17 May 2008 and Sina was notified of the decision at the appropriate time. Accordingly, the Secretary-General contends that the notification did not constitute a procedural error giving rise to a right to compensation.

14. The Secretary-General submits that the Dispute Tribunal erred in law and exceeded its competence in awarding compensation which can only be characterized in the present case as exemplary or punitive damages.

15. The Secretary-General requests that the Appeals Tribunal make a number of findings and vacate the orders of the Dispute Tribunal in so far as they relate to the award of compensation.

Sina's Answer

16. Sina requests that the Secretary-General's submission be rejected for failing to provide valid grounds for vacating the Judgment. The Secretary-General has failed to demonstrate how the award of compensation can be considered to be exemplary or punitive damages. Further, the Secretary-General is seeking to reargue the case based on an erroneous interpretation of the Dispute Tribunal's mandate.

17. Sina contends that he suffered consequences as a result of the Secretary-General's failure to inform him of the MSD's determination that he was fit for work. He was denied the right to contest that decision and he remained uninformed that he could return to duty for several months during which time he would have been eligible to apply for suitable vacancies as an internal candidate.

18. The Secretary-General incorrectly asserts that Sina did not seek damages for violation of his rights and Sina refers to his statement of appeal to the JAB dated 1 August 2008. Sina contends that it was within the discretion of the Dispute Tribunal to fix the amount of compensation, based upon its findings.

19. Sina argues that notice of administrative decisions is a basic prerequisite of due process. With respect to the Secretary-General's submissions concerning the right of Sina to be informed of the MSD's determination, Sina contends that sick leave is an entitlement and the relevant administrative instructions, including former Staff Rule 106.1(j), provide that in the event of a disagreement the staff member may pursue recourse through the convocation of a Medical Board. Such provisions logically require that decisions affecting a staff member's rights be communicated to the staff member, and Sina argues that the award of USD 500 in compensation was conservative in this case.

20. With regard to the Secretary-General's challenge to the award of compensation for failure to advise him in a timely manner of the non-renewal of his appointment, Sina argues that he was notified of the non-renewal of his contract after the non-renewal took effect and he was thus precluded from seeking a suspension of action, which he had previously done successfully. The non-renewal of his contract was also based on a false premise as his case before the ABCC had not been finalized and was still under consideration.

21. Sina argues that the submissions of the Secretary-General represent an abuse of process. Sina requests that the Appeals Tribunal dismiss the appeal in its entirety and award interest from the date of the Judgment of Dispute Tribunal and USD 5,000 in costs under Article 9(2) of the Statute of the Appeals Tribunal.

Considerations

22. The Dispute Tribunal found that Sina had no legitimate expectation of renewal of his contract, and the non-renewal decision was based on proper grounds and not affected by irrelevant considerations.

23. Nonetheless, the UNDT awarded Sina compensation for an alleged minor procedural defect by the Secretary-General in failing to timely notify him of a decision by the ABCC which had a direct impact on the non-renewal of his ALD contract, and failing to timely notify him of a decision of the MSD.

24. The Dispute Tribunal concluded that Sina did not prove that the omissions had any impact on him, his circumstances, or his entitlements, and that he suffered no adverse consequences from the alleged breaches. The UNDT, however, awarded compensation of USD 500, plus 19 days compensation (the time between the decision not to renew and its communication to him). But he was paid for those 19 days, justifying the UNDT's finding that he suffered no harm.

25. This Court will not approve the award of compensation when absolutely no harm has been suffered. While we agree with the UNDT that a staff member certainly has the right to be informed of administrative decisions affecting him, a few days lapse is inconsequential—and in this case had no consequences whatever.

Judgment

26. We vacate only that part of the UNDT Judgment awarding compensation.

Dated this 29th day of October 2010 in New York, United States.

Original and authoritative version: English

(Signed)

Judge Painter, Presiding

(Signed)

Judge Courtial

(Signed)

Judge Weinberg de Roca

Entered in the Register on this 29th day of December 2010 in New York, United States.

(Signed)

Weicheng Lin, Registrar