



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2009/023/
JAB/2008/039
Judgment No.: UNDT/2009/012
Date: 28 August 2009
Original: English

Before: Judge Coral Shaw
Registry: New York
Registrar: Hafida Lahiouel

ADORNA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for applicant:
George Irving

Counsel for respondent:
Ruth de Miranda, UNICEF

Notice: The format of this judgment has been modified for publication purposes in accordance with Article 26 of the Rules of Procedure of the United Nations Dispute Tribunal.

Judgment

The applicant's appeal is receivable.

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1. The applicant wishes to appeal an administrative decision which was made following an investigation by the United Nations Children's Fund ("UNICEF") of a complaint of sexual harassment and sexual assault filed against him in October 2006.
 2. The sole question for this preliminary hearing is whether the applicant's application was made in time.
 3. Counsel filed written submissions before the hearing and spoke to those submissions at the hearing.

Background

4. The outcome of the investigation into the allegations against the applicant was advised to him in a letter of 16 January 2007. This letter referred to the investigation of allegations of sexual harassment, abuse of authority and harassment in the workplace raised by a staff member. It issued the applicant with a written reprimand for "demonstrated lack of sensitivity", "apparent poor judgment in communication" and "clear and convincing evidence" of "making comments with a sexual connotation". In light of the circumstances, including the support of several staff for the applicant on a professional level, the respondent decided that formal charges would not be filed against him as a result of the complaint.
5. The applicant did not challenge that letter or ask for administrative review of the decision to reprimand him at the time it was made.
6. The complainant was dissatisfied with the outcome of the investigation. In 2007 she began a sustained campaign against the applicant and UNICEF in India in which she made serious public allegations including making a complaint to the Indian

police of criminal conduct by the applicant. The matter attracted significant media attention.

7. In October to December 2007, the applicant requested UNICEF to take a number of specific actions, including: disclosure of the full investigation report and a redacted version of the same report which UNICEF had released to the Indian government; that UNICEF make internal and public statements referring to the applicant's innocence; and financial support for his legal defence against the court proceedings brought against him by the complainant.

8. The respondent replied to these requests in a letter of 19 December 2007. In reply to the request that he be cleared of wrong doing the letter stated that the investigation did not clear him of all of the allegations and that he had been formally reprimanded for inappropriate behaviour including public jokes and comments with sexual connotations that made some staff feel uncomfortable in the workplace. It went on to say that not all but only some of the more serious allegations were found to have been fabricated. The remaining allegations lacked clear and convincing evidence.

9. In reply to the request for copies of the investigation reports the letter stated that it is not the policy of the Organization to share the investigation report unless disciplinary action is taken against any of the staff members involved. The letter did not specifically refuse to give the applicant a copy of the redacted version but gave a reason why a redacted copy had been shared with the government of India. I infer from this response that the respondent refused to release that version to him.

10. Finally, the letter advised that staff members do not have the right to have legal expenses paid for external proceedings.

11. The applicant sought an administrative review of these decisions on 7 February 2008. The outcome of that review was that his requests would not be met as they were time barred and without merit. The applicant appealed this decision.

When time runs

12. The time for requesting an administrative review runs from the date the administrative decision was received by the staff member.

13. Ms. de Miranda submitted for the respondent that the 16 January 2007 letter fully informed the applicant of the results of the investigation and that he accepted the reprimand and investigative findings without voicing disagreement. As he did not request a review of it within two months he is now estopped from doing so.

14. It is the respondent's position that the 19 December 2007 letter was not an administrative decision but the logical consequence of an administrative decision taken almost a year earlier, on 16 January 2007. Ms. de Miranda relied on a decision of the United Nations Administrative Tribunal in which it was held that "the Administration's response to [a] renewed request would not constitute a *new* administrative decision which would restart the counting of time".¹

15. In spite of these submissions, Ms. de Miranda fairly conceded in response to a question from the United Nations Dispute Tribunal that the refusal to provide the applicant with the reports was an administrative decision—although one that the respondent believes was justified in light of its policies.

Conclusion

16. I find that the letter of 19 December 2007 resulted in three administrative decisions: the refusal to release the investigation report, the refusal to pay the applicant's legal expenses and the refusal to issue internal and public announcements acknowledging his exoneration.

17. These decisions are not a reiteration of the matters contained in the letter of reprimand. Although they arise out of the applicant's request for specific responses and are therefore connected to the original administrative decision, they are discrete

¹ United Nations Administrative Tribunal Judgment No. 1211, *Muigai*, p. 9 (2005) (emphasis in original).

from it. The requests were motivated by events subsequent to the letter of reprimand which had significant repercussions for the applicant.

18. Accordingly, the applicant's request for administrative review was brought in time and his appeal against the outcome of that review is receivable. The merits of his appeal may now be considered by the Tribunal.

19. At the conclusion of the hearing the Tribunal proposed to the parties that this is a case which may be suitable for mediation. The parties are to advise the Tribunal by 10 September 2009 if they consent to the Tribunal suspending the proceedings pursuant to Article 15 of the Rules of Procedure and to it sending the case to the Mediation Division in the Ombudsman's Office for consideration.

(Signed)

Judge Coral Shaw

Dated this 28th day of August 2009

Entered in the Register on this 28th day of August 2009

(Signed)

Hafida Lahiouel, Registrar, New York