



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2009/7
Judgment No.: UNDT/2009/066
Date: 4 November 2009
Original: English

Before: Judge Jean-François Cousin
Registry: Geneva
Registrar: Víctor Rodríguez

PARKER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Nicole Lewis

Counsel for Respondent:

Shelly Pitterman, DHRM/UNHCR

1. On 27 August 2009, the Tribunal issued its Judgment UNDT/2009/13 on the application filed on 28 July 2008 by the Applicant, with the assistance of Ms. Nicole Lewis, before the Geneva Joint Appeals Board (JAB), and transferred to the UNDT as of 1st of July 2009. The said Judgment ruled on all issues raised by the Applicant save for his request to be compensated for the damage allegedly caused to his career development, which would be due to the course of action of several persons in the Office of the United Nations High Commissioner for Refugees (UNHCR).

2. The Tribunal declared receivable the request for compensation for damages resulting from harassment allegedly suffered from the beginning of 2005 to 7 November 2007. However, it was prevented from passing judgment on this particular matter, as the Respondent had limited himself to argue the inadmissibility of such request, without adducing any legal argument or factual explanation on the merits.

3. Consequently, the Tribunal instructed the Respondent to submit, within one month as from the notification of the Judgment, his observations concerning the facts that the Applicant claimed to amount to harassment as well as the damage allegedly caused.

4. Following the Tribunal's directions, the Respondent submitted his observations on 30 September 2009. They were transmitted to the Applicant for comments, which he presented on 16 October 2009.

Summary of the Facts

5. The Applicant, who had been in the service of the UNHCR since May 1994, was appointed Senior Desk Officer East and Horn of Africa Desk (DEHA), Africa Bureau, in Geneva, effective February 2004.

6. The Applicant was not promoted at the UNHCR Annual Promotion session which took place in 2004. He filed a recourse which was examined during the Recourse Session pertaining to the Annual Promotion Session held in 2004, but his recourse did not succeed.

7. By e-mail of 6 February 2005, the Applicant informed the High Commissioner (HC) that he experienced difficulties in his relation with his direct supervisor, the Chief, DEHA, and requested him to personally intervene to settle the problem.

8. In September 2005, he was temporarily reassigned to the position of Senior Registration Coordinator, Division of Operational Support in Geneva.

9. On 19 September 2005, the Applicant's post as Senior Desk Officer was advertised as vacant in the relevant Biannual Compendium of Vacant Posts (OIM/FOM No. 051/2005).

10. Effective 31 March 2006, his lien to the post he had been filling was discontinued. The relevant Personnel Action sheet indicated that the post was being abolished on that date.

11. In May 2006 the Applicant contacted the then Secretary of the Geneva JAB, in view of initiating a formal appeal. The Secretary of the JAB facilitated a series of meetings with, among others, the Director, Division of Human Resources Management, the Chief of Cabinet of the HC and the HC himself. The Respondent made a commitment to find a solution.

12. In January 2007, Mr. Parker was placed as Staff In Between Assignments (SIBA).

13. In September 2007, the Applicant was appointed Senior Desk Officer at the Middle East and North Africa Desk (MENA), Africa Bureau. This assignment was rescinded shortly after under circumstances comprehensively analyzed in Judgment UNDT/2009/13. The Applicant was then placed on SIBA, the status in which he still remains to date.

Contentions of the Parties

14. The arguments submitted by the Applicant with regard to the issue of alleged harassment against him may be summarized as follows:

- Starting 2004, various persons in UNHCR embarked on a course of conduct which resulted in repeated injury to the Applicant. This encompasses his non-

promotion in 2004, harassment by the Chief, DEHA, which escalated to non-assignment of work to the Applicant, as well as a number of subsequent decisions, namely: advertising his post as Senior Desk Officer without prior notification or consultation in September 2005; discontinuation of his post and lien on 31 March 2006 without prior notification or consultation, being only informed in May 2006; discontinuation of his temporary assignment in May 2006 without any notice or consultation; belated delivery of his ten-year service recognition certificate, which was found after the office of the Director of the Africa Bureau was cleaned upon his retirement, 15 months after the issuance of the certificate. The rescission of the Applicant's appointment as Senior Desk Officer, Middle East and North of Africa Desk, Africa Bureau on 7 November 2007 was the culmination of the course of harassment against him. He also did not receive clearance for a number of positions he had applied for after his last appointment was rescinded. The above-described course of action, if substantiated, amounts to harassment.

- A number of those actions were intended to shield the staff members who harassed the Applicant. The Organization thereby became responsible for at least condoning harassment against one of its staff members.

- The Applicant has demonstrated that a campaign of harassment was conducted against him for the period 2005-2007. He relies in particular on e-mail exchanges between the Deputy Director, Africa Bureau, and the Director, Division of Human Resources Management dated April 2007. Such correspondence proves that the Chief, DEHA, unfairly deprived the Applicant of work, and that the Respondent took no action to end harassment.

- Furthermore, the Administration failed to provide defense regarding those allegations and did not deny harassment. The Tribunal should therefore uphold the Applicant's claims. He established by balance of probabilities that he had been subject to harassment, since he had raised a *prima facie* case, which was not refuted by the Organization. In this connection, UNAT has recognized that a staff member alleging harassment does not need to fulfill the higher standard of proof "beyond reasonable doubt".

- The Respondent's argument that the Applicant never submitted his case to the Inspector-General's Office (IGO) is not defensible. The Administration was

aware of the facts and deployed no efforts to determine the veracity of the allegations leveled and to ensure the Applicant's supervisor's accountability.

- The Respondent's assertion that too much time elapsed to undertake an investigation at this point is not convincing, since 2 to 4 years is no significant passage of time and records are most probably kept.

15. The corresponding arguments submitted by the Respondent may be summarized as follows:

- The Applicant did not submit a complaint before IGO, which is the avenue set in relevant rules to be followed by a staff member who esteems having been victim of harassment. As a result, no investigation was carried out and, consequently, the Administration is not in a position to provide a substantive response on the Applicant's claims.

- In accordance with paragraph 22 of *UNHCR's Policy on Harassment, Sexual Harassment, and Abuse of Authority* of April 2005 and to paragraph 5.4.6 of OIM/FOM 54/2005, *The role, functions and modus operandi of the Inspector General's Office*, IGO investigations following formal complaints should normally be undertaken within one year of the incident at issue. Hence, due to the time that has elapsed, it would now be extremely difficult to establish the facts.

- Once the Administration became aware of the difficulties of the Applicant and his supervisors, it tried its utmost to resolve them. The High Commissioner even was involved personally in this process.

- As regards the decisions to advertise the Applicant's post in September 2005, to discontinue his post in March 2006, and to discontinue his temporary assignment in May 2006, the Applicant has failed to substantiate how these decisions could constitute harassment by the Organization. Moreover, they are regular decisions whose legality was not challenged at the time they were made; they may thus not form the basis of a claim now.

- The Applicant has failed to substantiate the damage stemming from the alleged harassment. In this connection, the Applicant has at no point ceased receiving his full entitlements and benefits.

Considerations

16. In keeping with the determination of admissibility made in Judgment UNDT/2009/13, only facts occurred from early 2005 to 7 November 2007 are to be taken into consideration with regard to the allegations of harassment leveled by the Applicant. Consequently, reported actions and decisions dating back to 2004, in particular the non-promotion of the Applicant in 2004, are to be excluded from the object of the present Judgment. Likewise, events which took place after 7 November 2007, i.e. non clearance for a number of positions, must not be considered either.

17. As regards the decisions to (a) advertise as vacant the Applicant's post without prior notification or consultation in September 2005, (b) discontinue his post and lien on 31 March 2006 without notification or consultation, and (c) discontinue his temporary appointment without prior notice or consultation, the Applicant failed to show how they would constitute harassment. No information was provided by the Applicant permitting to conclude that they were illegal, arbitrary or tainted by improper motivation.

18. A similar finding has been reached regarding the belated handling of the Applicant's ten-year service recognition certificate. In fact, the circumstances described by the Applicant himself do not allow to establish a malicious omission on the part of the Administration.

19. Concerning the alleged abuses by the Applicant's immediate supervisor, the Applicant provides no precise details on the facts and circumstances that in his view amounted to harassment.

20. Nonetheless, the Applicant does produce some evidence supporting his assertion that his hierarchy failed to assign him work for a certain period; specifically, he presents an e-mail from the then Deputy Director, Africa Bureau, to the director, DHRM, dated 8 April 2007, implying that the Applicant's supervisor was withholding work from him. In this connection, it should be borne in mind that the Deputy Director, being the supervisor of both the Applicant and the Chief of DEHA, was particularly well placed to realize and assess the problems among them at the time. Moreover, due weight must be given to the fact

that the Respondent did not disprove this point by producing countervailing evidence. Lack of proper assignments by early 2005 appears thus established.

21. On the other hand, the Applicant provides extremely scant details on this claim. No indication was submitted as to the concrete circumstances in which work, according to him, was withheld by his supervisor, he does not clarify whether he was completely deprived of work, or rather not assigned sufficient tasks, or how long this situation lasted.

22. Deprivation of substantive work, where substantiated, constitutes indeed a regrettable departure from regular supervisor-supervisee relations which might cause injury to the Applicant's career. As a matter of principle, every staff member is entitled to be given the opportunity to discharge the duties incumbent on him or her, and this includes being allocated sufficient and appropriate tasks.

23. Having said that, the above does not necessarily reveal, in and by itself, that the Organization engaged in a course of harassment against the Applicant, as he states. The burden of providing convincing evidence of harassment, prejudice or any kind of improper motivations rests with the Applicant who alleges so. It is noteworthy, for that matter, that the Deputy Director of the Africa Bureau, in his message of 8 April 2007, at no point mentions a harassment context.

24. The Applicant also contends that the Organization incurred responsibility by refusing to prevent the Applicant's hierarchy from treating him unfairly and to hold accountable those responsible for causing injury to his career, even though UNHCR's senior management was advised of the problems he was facing.

25. However, it clearly flows from the facts of the case that the Administration did address the Applicant's difficulties as they became aware of them. In fact, there is a proven record of considerable efforts deployed in order to resolve the Applicant's situation, involving the UNHCR senior management at the highest level. The HC personally met the Applicant and participated in the attempts to find an adequate solution. Contrary to what the Applicant's asserts, the e-mail of the Chief, DHRM, to the Director, Africa Bureau, dated 4 April 2007 does not demonstrate that the Respondent took no steps to put an end to the alleged harassment. Instead, it shows that the Administration took measures to settle the interpersonal problems between the Applicant and his supervisor.

26. In addition, it results from the case file that the Organization did conform to the procedures prescribed by the relevant rules upon receiving complaints for harassment. The *UNHCR's Policy on Harassment, Sexual Harassment, and Abuse of Authority* expressly foresees the possibility of using informal procedures to deal with a situation of this kind. Hence, inasmuch as the allegations were diligently addressed through the procedures established to this effect, the Administration must be deemed to have fulfilled its obligations in this respect. It should be recalled that the Applicant himself opted for informal channels as a means to settle his situation, and accepted the agreement so reached. It is therefore justified for the Organization not to launch further procedures once the difficulties seemed to have been solved. In particular, it is reasonable that no additional fact-finding steps were undertaken, assuming that, had the Applicant have felt the need of an inquiry to be conducted, he would have made a request to this end before IGO.

27. Based on the foregoing, the Applicant failed to provide sufficient evidence to substantiate his allegations that he was subjected to harassment by the Organization and that the latter bears responsibility for having failed to take adequate measures on his harassment allegations.

Conclusion

For the reasons stated above,

It is DECIDED that,

28. The allegations of harassment put forward by the Applicant are not established. Accordingly, the request for compensation is rejected.

(Signed)

Judge Jean-François Cousin

Dated this 4th day of November 2009

Entered in the Register on this 4th day of November 2009

(Signed)

Víctor Rodríguez, Registrar, UNDT, Geneva