



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2009/023/
JAB/2008/039
Order No.: 142 (NY/2010)
Date: 7 June 2010
Original: English

Before: Judge Memooda Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

ADORNA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON AUTHENTICATION AND
PRODUCTION OF
DOCUMENTS**

Counsel for Applicant:
George Irving

Counsel for Respondent:
Jorge Ballesterro, UNICEF

Introduction

1. The applicant, a former senior official with the India office of the United Nations Children's Fund (UNICEF), received a letter of reprimand for inappropriate behavior. The decision to issue a written reprimand was made in January 2007 following an investigation by UNICEF of a complaint of sexual harassment and sexual assault filed against him in October 2006. The applicant subsequently requested the respondent to disclose the investigation report, issue public statements declaring the applicant's innocence, and to provide him with financial support for his legal defence against the proceedings brought against him by the complainant in the state courts of India. The respondent refused the applicant's requests. The applicant sought an administrative review of the respondent's refusal and, subsequently, filed an appeal with the Joint Appeals Board. In July 2009, the matter was transferred to the Dispute Tribunal.

Legal Issues

2. In light of the parties written pleadings and oral submissions at the hearing held on 26 May 2010, the principal legal issues in this case are as follows:
- a. Was the decision not to provide the investigation report to the applicant prior to the issuance of the reprimand in violation of his rights?
 - b. If the applicant's rights were violated with respect to the nondisclosure of the report, was the decision to issue the written reprimand lawful?
 - c. Were the applicant's rights violated with respect to the manner in which the Administration handled the matter after the issuance of the letter of reprimand and, if so, what remedy is the applicant entitled to?

- d. Is the applicant entitled to be recompensed for any legal expenses?

Submissions

3. The applicant's submissions may be summarised as follows:
 - a. The applicant asserts that he should have been given a copy of the investigation report that was relied on by UNICEF in issuing the written reprimand. Without access to the report the applicant was deprived of the opportunity to adequately defend himself against the complainant's accusations and against the findings on which the letter of reprimand was based. The information in the letter of reprimand was based on allegations that were never properly brought to the applicant. The written reprimand was a *de facto* disciplinary measure. The decision to issue the reprimand was unlawful as it was vitiated by significant procedural violations.
 - b. The public statements issued by UNICEF were neither timely nor adequate.
 - c. The applicant requests compensation for denial of due process and violation of his rights in the amount of two years' net base salary. The applicant also seeks a recommendation that those individuals who abused their authority in this case be held financially liable after a UNICEF audit of the internal justice system establishes individual responsibilities.
 - d. The applicant requests reimbursement of the legal expenses caused by the Organization's poor handling of the case, including USD2,800 for the cost of legal defense in India and USD21,500 in New York.

- e. The applicant further submits a claim for the cost of “public exoneration”, estimated at USD30,000, in addition to the legal expenses.
4. The respondent’s submissions at the hearing may be summarised as follows:
- a. The decision not to provide the applicant with a copy of the investigation report was correct as no disciplinary proceedings had been initiated against the applicant. The applicant’s due process rights have not been violated. The Organization acted in accordance with the provisions in force at the time of the events. The applicant was informed of the ‘allegations against him and given time to review those allegations and respond to them. He was interviewed and was later informed of the results of the investigation, ie that the allegations against him were not substantiated and the disciplinary case would be closed. He was made aware also that the complainant had been informed of the results of the investigation.
 - b. The public announcements issued by UNICEF were appropriate, accurate and timely in view of the very sensitive issues at hand.
 - c. The decision to retain private counsel was that of the applicant alone. No promises were given by UNICEF to cover his legal costs. Further, in accordance with art. 10.5 of the Tribunal’s Statute, the Tribunal may only award costs against a party that has manifestly abused the proceedings. No such abuse has occurred in the present proceedings and therefore the request by the applicant cannot be granted.
 - d. No damages have been caused to the applicant by the respondent.

Specific requests

Request to authenticate the investigation report provided to the applicant

5. Both in his submissions and at the hearing the applicant expressed concerns over the integrity and authenticity of the investigation report as provided by the respondent. The applicant submitted that changes could have been made to the investigation report after the document was signed off by the investigators. The applicant requested that the report be authenticated by the three authors of the report, confirming that except for redaction of proper names, no further changes have been made since its adoption. The applicant submitted at the hearing that the value of authenticating the report outweighs the inconvenience this would cause to the respondent.

6. At the hearing, counsel for the respondent objected to the applicant's request for authentication and submitted that the document provided to the Tribunal and the applicant was an authentic copy of what is on file with UNICEF. Counsel for the respondent further stated that such authentication was not an established practice and was not necessary.

7. Having considered the applicant's request and the respondent's objections, I have decided to order that the report be authenticated in light of the particular circumstances in this case. I do not doubt that the statement from the bar by counsel for the respondent, that the report provided to the Tribunal and to the applicant was an authentic copy of what was on file with UNICEF, was made in good faith. This however, does not address concerns expressed by the applicant, which were of a different nature—namely, is the document provided to the Tribunal and to the applicant the same report that was prepared and issued by the investigators, considering the passage of time and the number of individuals involved in the process? I find the applicant's request reasonable and I find that an order to authenticate the report as requested by the applicant would be appropriate for the fair and expeditious disposal of the case and to do justice to the parties.

Redacted report given to Ministry of External Affairs of India

8. In April 2007, following UNICEF's communications with the Ministry of External Affairs of India concerning this case, UNICEF released a redacted version of the investigation report to the Ministry. The applicant was not provided with this redacted report. He now requests the Tribunal to order the respondent to provide a copy of the redacted report given to the Ministry of External Affairs, submitting, in effect, that access to this document will permit the applicant to evaluate the nature and effect of representations made by UNICEF in relation to his case.

9. Counsel for the respondent stated at the hearing that, in principle, he had no objection to providing this report to the Tribunal.

10. I find that the applicant's request is reasonable, that the requested document is relevant to the issues in this case, and that providing the redacted copy of the report to the Tribunal and to the applicant will be in the interests of justice and will assist with the fair and expeditious disposal of the case.

IT IS ORDERED THAT:

1. By **Thursday, 17 June 2010**, the respondent is to file and serve (i) an authentication certificate or a brief statement from the investigators certifying that the appended copy of the investigation report provided by the respondent is an authentic copy of the original document, *or* (ii) a copy of the investigation report duly endorsed on each page by the investigators concerned as to its authenticity.

2. By **Thursday, 17 June 2010**, the respondent is to file and serve a copy of the redacted report provided to the Ministry of External Affairs of India.

3. No further submissions will be allowed without prior leave of the Tribunal.

4. Unless either party seeks leave to file any further submissions by **Monday, 21 June 2010**, the Tribunal will proceed to disposal of this case on the papers.

(Signed)

Judge Memooda Ebrahim-Carstens

Dated this 7th day of June 2010