

UNDT/2013/032, Tadonki

UNAT Held or UNDT Pronouncements

Improper motives: The Tribunal held that the non-renewal of the Applicant's contract was motivated by improper motives in view of the fact that: (i) the Applicant's relationship with the UN Humanitarian Coordinator (HC), under whose leadership the Applicant was working, was hostile; and (ii) the HC and the Applicant's deputy, who had unsuccessfully competed for the Applicant's post, had gone to great lengths to undermine him and to tarnish his reputation with OCHA leadership.

Performance: The Tribunal held that while the Applicant may have made mistakes, shown an excessive zeal, or may have taken too much initiative this cannot be interpreted as poor performance/non-performance. The Tribunal held further that the Applicant's alleged non-performance/poor performance was not based on any proper appraisal process, lacked substance and was used as a means to remove the Applicant while protecting the HC.

Performance appraisal: The Tribunal found that the PAS procedures set out in ST/AI/2002/3 were not followed in that there was no clear reporting line. To this end, the Tribunal held that it was incumbent on OCHA senior management to set out clearly who the Applicant's first and second reporting officers were but this was not done until he had been forced to leave his position in Zimbabwe. The Tribunal held further that there is nothing in the rules that says that a staff member who is working in a field mission is deemed to have impliedly waived his/her right to be governed by the United Nations Staff Regulations and Rules or the administrative instruction governing the Performance Appraisal System, or that in the absence of a clear reporting line that staff member should bear the consequences of his/her alleged non-performance.

Investigation: The Tribunal concluded that the Muller mission, which was dispatched with the sole mandate of looking into the working of the OCHA Zimbabwe office, was in fact a device used by OCHA top management to evaluate and investigate the performance of the Applicant without a proper and objective discussion and with the specific purpose of getting rid of him.

Separation process: The Tribunal held that the Applicant was sent to South Africa as a prelude to his ultimate separation not so much in the interest of the Organization, or in the pursuit of using the best resources of the Organization for the achievement of the purposes under the Charter, and Rules and Regulations made under its authority. The Tribunal concluded that the requirements of due process and fairness were completely disregarded by OCHA in relation to the manner in which the Applicant was separated from service as Head of Office in OCHA Zimbabwe and as such, his rights as a staff member of OCHA were violated.

Abuse of process: The Tribunal held that the manner in which the proceedings were conducted by and on behalf of the Respondent in certain material respects (i.e. raising unsubstantiated allegations of harassment against the Applicant, filing of a motion to recall a witness who had been thoroughly examined, cross-examined and re-examined and the filing submissions that were irrelevant, unnecessary, gratuitous) constituted a manifest abuse of process under art. 10.6 of the Statute.

UNDT ordered financial compensation, specific performance and referred various staff members to the Secretary-General for accountability.

Accountability referral: The Tribunal referred the Humanitarian Coordinator, Mr. Agostinho Zacarias, the Under-Secretary-General for Humanitarian Affairs, Mr. John Holmes, the Assistant Secretary-General for

Humanitarian Affairs, Ms. Catherine Bragg, and the Deputy Head of OCHA, Mr. Farah Muktar, to the Secretary-General for accountability purposes. This, however, presupposes that these individuals are still staff members of the Organization.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the administrative decision by OCHA to not renew his appointment as Head of Office for OCHA Zimbabwe and to precipitously reassign him from Zimbabwe to the OCHA Regional Office in South Africa to take up the position of Senior Humanitarian Affairs Officer until the expiry of his contract. According to the Respondent, the Applicant's appointment was not renewed on the basis of non-performance.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

UNDT ordered financial compensation, specific performance and referred various staff members to the Secretary-General for accountability.

Full judgment

[Full judgment](#)

Applicants/Appellants

Tadonki

Entity

OCHA

Case Number(s)

UNDT/NBI/2009/036

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

26 Feb 2013

Duty Judge

Judge Boolell

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abuse of process before UNDT/UNAT

Costs

Compensation

Non-pecuniary (moral) damages

Disciplinary matters / misconduct

Disciplinary measure or sanction

Discrimination and other improper motives

Due process

Separation from service
Referral for accountability
Applicable Law
Administrative Instructions

- ST/AI/2002/3

Secretary-General's bulletins

- ST/SGB/2008/5
- ST/SGB/2009/11

UNDT Statute

- Article 10
- Article 10.5
- Article 10.6
- Article 10.7
- Article 10.9
- Article 11.6

UNRWA DT Statute

- Article 10.8

Related Judgments and Orders

UNDT/2009/016

UNDT/2009/028

UNDT/2009/058

UNDT/2009/088

UNDT/2010/107