

UNDT/2014/051, Nartey

UNAT Held or UNDT Pronouncements

The Tribunal found that the Applicant is entitled to compensation for the procedural irregularities occasioned him by the failure of the Administration to follow its own guidelines and its rules and procedures, namely: UNON management abused its authority in refusing to release the Applicant on mission assignment to UNAMID and in denying him the grant of a lien on his post. The failure by the Ethics Office in refusing to act on the basis of the report of retaliation filed by the Applicant and its failure to take all necessary action to protect the Applicant from retaliation.

Receivability - The prohibited conduct of harassment and abuse of authority against a staff member would most often be seen to have occurred over a period of time and involving a series of incidents. To argue that the victimized staff member must make a request to the management evaluation unit on every occasion that he is humiliated, demeaned, threatened or mistreated is as unserious as it is untenable. The Tribunal holds that with regard to the peculiar characteristics and elements of prohibited conduct, this Application is indeed receivable.

Retaliation - Regardless of whether the offer from UNAMID to the Applicant was later aborted by the non-issuance of a Sudanese visa or by a force majeure, the fact remains that UNON administration had acted illegally and its refusal in the circumstances served to reveal a state of mind bent on exacting retaliation and forcing the Applicant out of UNON.

Protected activity - Testifying before the Tribunal amounts to an “activity protected by the present policy” within the scope of section 1.4 of ST/SGB/2005/21. The failure by the Ethics Office to act on the basis of the report of retaliation filed by the Applicant in accordance with the provisions of ST/SGB/2005/21 entitles the Applicant to compensation for failure to accord him due process.

Accountability - The failure by the Ethics Office to act on the basis of the report of retaliation filed by the Applicant in accordance with the provisions of

ST/SGB/2005/21 also entitles the Applicant to compensation for failure to accord him due process. The Tribunal finds the said disobedience to be so serious a matter as to warrant the attention of the Secretary-General. In view of the totality of evidence placed before it, the Tribunal could only arrive at the inescapable conclusion that at the times material to this Application, Mr. Barabanov had created an unhealthy work environment riddled with fear and intimidation of staff members. This state of affairs must be condemned. The case is referred to the Secretary-General under art. 10.8 of the Statute of the Tribunal for the purpose of considering what action should be taken in respect of the conduct of Ms. Dubinsky for disobeying the Tribunal's orders and Mr. Barabanov for his abuse of authority and acts of intimidation and retaliation against the Applicant.

The Tribunal awarded the Applicant six months' net base salary as compensation for procedural irregularities.

Accountability referral: The Tribunal referred the case to the Secretary-General, under art. 10.8 of its Statute, for the purpose of considering what action should be taken in respect of the conduct of Ms. Dubinsky for disobeying the Tribunal's orders and Mr. Barabanov for his abuse of authority and acts of intimidation and retaliation against the Applicant.

Decision Contested or Judgment/Order Appealed

The Applicant contested primarily the decision by the United Nations Office at Nairobi (UNON) not to grant a lien on his post to enable him undertake a mission assignment to the African Union/United Nations Hybrid Operation in Darfur ("UNAMID"). It was his case that the decision was taken as part of a series of prohibited conduct and retaliatory actions meted out against him for having testified as a witness before the Tribunal on 2 September 2009 in the case of Kasmani UNDT/NBI/2009/67.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Nartey

Entity

UNON

Case Number(s)

UNDT/NBI/2012/62

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

16 May 2014

Duty Judge

Judge Izuako

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Retaliation

Jurisdiction / receivability (UNDT or first instance)

Referral for accountability

Applicable Law

Administrative Instructions

- ST/AI/404

Secretary-General's bulletins

- ST/SGB/2005/21
- ST/SGB/2008/5

Staff Regulations

- Regulation 1.2

Staff Rules

- Rule 11.2(c)

Related Judgments and Orders

UNDT/2013/023

UNDT/2012/114

UNDT/2010/030

UNDT/2009/051

2012-UNAT-269