



JUDGE MARK P. PAINTER, Presiding.

Synopsis

1. The Dispute Tribunal (Dispute Tribunal or UNDT) found that Shkelqim Sina (Sina) had no legitimate expectation of renewal of his contract and that the non-renewal decision was based on proper grounds and not affected by irrelevant considerations. Nonetheless, he was awarded compensation for an alleged minor procedural defect by the Secretary-

residence. Sina was placed on sick leave, and he later submitted a claim for compensation under Appendix D to the Staff Rules with the ABCC.

5. A number of investigations into the cause of the explosion were carried out in 2006 and 2007, including by the Office of Audit and Performance Review (OAPR) and the Office of Internal Oversight Services (OIOS). On 21 December 2006, prior to the release of the findings of the OAPR, the Secretary-General decided not to renew Sina's contract as his position had become redundant. In February 2007, the Secretary-General "put aside" the decision of 21 December 2006 and, on an exceptional basis, extended Sina's contract from 27 February 2007 to 31 May 2007 pending the ongoing investigation and his ongoing medical treatment. Subsequent extensions were made pending the final determination of Sina's claim before the ABCC.

6. On 30 October 2007, UNDP informed Sina that, on the basis of the reports of the investigation, it concluded that "absent definitive evidence as to the origin of the explosion, no one could be held liable for it". On 8 April 2008, the Medical Services Division (MSD) concluded that Sina did not qualify for disability benefits and that he was fit for work, although it would not recommend that he return to Afghanistan. The report of the MSD was not provided to Sina.

7. The final extension of Sina's contract was for a month, to 31 May 2008. After meeting at the end of April, on 12 May 2008 the ABCC recommended that Sina's injuries and illnesses should be recognized as attributable to the performance of his official duties. The ABCC's recommendation was approved on behalf of the Secretary-General on 17 May 2008. UNDP was notified of the recommendation and the Secretary-General's decision on 27 May 2008. On 30 May 2008, the Secretary-General informed Sina of the ABCC's recommendation and notified him that the final extension of the contract lapsed on 30 May 2008.

8. On 30 October 2008, Sina challenged the decision not to renew his contract before the Joint Appeals Board (JAB). Following the introduction of the new system of internal justice from 1 July 2009, the application was transferred to the UNDT.

9. On 9 April 2010, the Dispute Tribunal issued Judgment UNDT/2010/060. The Dispute Tribunal found that Sina had no legitimate expectation of renewal of his contract and that the non-renewal decision was based on proper grounds and not affected by

governing compensation under the Statute of the Dispute Tribunal precludes the award of compensation.

13. The Secretary-General submits that the Dispute Tribunal erred in law in finding that the notification to Sina on 30 May 2008 of the expiration of his contract on 30 May 2008 was a procedural error. The Dispute Tribunal found that Sina had a legitimate expectation of renewal of his contract whilst the ABCC consideration was outstanding, and that Sina should have been immediately notified of the recommendation of the ABCC as he was entitled to know of the fulfillment of one of the prerequisites for his separation. The Secretary-General argues that the ABCC's recommendation had no effect until it was reviewed and either affirmed or rejected by him. This process was only completed by 17 May 2008 and Sina was notified of the decision at the appropriate time. Accordingly, the Secretary-General contends that the notification did not constitute a procedural error giving rise to a right to compensation.

14. The Secretary-General submits that the Dispute Tribunal erred in law and exceeded its competence in awarding compensation which can only be characterized in the present case as exemplary or punitive damages.

15. The Secretary-General requests that the Appeals Tribunal make a number of findings and vacate the orders of the Dispute Tribunal in so far as they relate to the award of compensation.

Sina's Answer

16. Sina requests that the Secretary-General's submission be rejected for failing to provide valid grounds for vacating the Judgment. The Secretary-General has failed to demonstrate how the award of compensation can be considered to be exemplary or punitive damages. Further, the Secretary-General is seeking to reargue the case based on an erroneous interpretation of the Dispute Tribunal's mandate.

17. Sina contends that he suffered consequences as a result of the Secretary-General's failure to inform him of the MSD's determination that he was fit for work. He was denied the right to contest that decision and he remained uninformed that he could return to duty for several months during which time he would have been eligible to apply for suitable vacancies as an internal candidate.

24. The Dispute Tribunal concluded that Sina did not prove that the omissions had any impact on him, his circumstances, or his entitlements, and that he suffered no adverse consequences from the alleged breaches. The UNDT, however, awarded compensation of USD 500, plus 19 days compensation (the time between the decision not to renew and its communication to him). But he was paid for those 19 days, justifying the UNDT's finding that he suffered no harm.

25. This Court will not approve the award of compensation when absolutely no harm has been suffered. While we agree with the UNDT that a staff member certainly has the right to be informed of administrative decisions affecting him, a few days lapse is inconsequential—and in this case had no consequences whatever.

Judgment

26. We vacate only that part of the UNDT Judgment awarding compensation.

Dated this 29th day of October 2010 in New York, United States.

Original and authoritative version: English

(Signed)

Judge Painter, Presiding

(Signed)

Judge Courtial

(Signed)

Judge Weinberg de Roca

Entered in the Register on this 29th day of December 2010 in New York, United States.

(Signed)

Weicheng Lin, Registrar