



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Case 201

Appellant

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Counsel for Appellant: George G. Irving

Counsel for Respondent: Amy Wood

JUDGE KAMALJIT SINGH GAREWAL, Presiding.

Synopsis

1. The Appellant (name withheld on request) was serving as Portfolio Manager with the United Nations Office for Project Services (UNOPS). He reported certain wrongdoings on the part of a Project Management Specialist.

2. The Appellant claimed that he faced retaliation, was relocated from New York to Copenhagen, was unsuccessful in 11 selection processes and finally was separated from service on 30 November 2008.

3. We follow our decision in *Koumoin*¹ and hold that the Appellant has not been able to establish that he was a genuine whistle-blower.

4. We affirm the UNDT Judgment that there was no connection between the so-called report of wrongdoing and the administrative decisions in respect of the Appellant. The appeal is dismissed.

Facts and Procedure

5. The narrative of this case begins when the Appellant was serving as a Portfolio Manager for Argentina (P-4) with UNOPS in New York. In autumn 2005, the Appellant reported certain wrongdoings by the Project Management Specialist to his Regional Director. The Specialist was told that his contract would not be renewed on expiration at the end of 2005, but when the new Interim Executive Direct

Headquarters. The Appellant was further informed that, if he did not accept the position by

Issues

12. (i) Did the UNDT correctly determine that the non-renewal decision was not retaliatory?

having to disprove everything that the Respondent had said. The analysis in the Judgment deals with a few contested decisions and concludes that they may have been prejudicial but were not retaliatory.

15. The Judgment does not address the Appellant's other arguments that acts amounting to abuse of authority, procedural irregularity, and denial of due process were equally unlawful and indicative of discriminatory treatment. Even in the absence of clearly delineated motivation of retaliation, the impugned decisions leading to his separation were in themselves an abuse of authority to the extent that they individually and cumulatively prejudiced the Appellant's legitimate career expectations. There was also the misreading of the oral testimony of two witnesses. The Judgment wrongly considered allegations of retaliation as peripheral issues and misinterpreted the notion of institutional prejudice.

16. The Appellant went on to plead further detailed grounds that there had been errors of facts, the decision to remove his portfolio was not correctly appreciated, the Appellant's reassignment was not seen in the proper light, the restructuring and separation were not properly examined, the job fair exercise was condhim8ie g8.814rlgtiTJ18.84rlwasAe-0.0h4.1(gt)- na

there was no basis to support the claim of retaliation against the Appellant. The Appellant's assertion that the Dispute Tribunal failed to consider certain facts did not establish any errors of facts leading to a manifestly unreasonable decision, warranting a reversal of the judgment.

Considerations

20. In the *Koumoin* Judgment rendered during its 2011 Spring Session, this Court discussed the issue of retaliation and found that there was nothing on the record to establish that the Appellant in that case was a genuine whistle-blower who was subject to retaliation following his report of possible misconduct by his superior. We rely on the exposition of legal framework regarding retaliation in the Judgment to dispose of the present case.

21. In all fairness to the UNDT, it would be appropriate to briefly summarize the Judgment before commencing the task of determining whether the Appellant has established any of the five grounds for challenging the Judgment. These are well-known grounds given in Article 2(1)(a) to (e) of the Statute of the Appeals Tribunal.

22. The UNDT Judgment commences with setting out the real issue in the case and then lists the multiple recruitment processes regarding positions which the Appellant applied for. It was in autumn 2005 that the Appellant reported the wrongdoing of his colleague. After referring to two communications, the Judgment describes the testimony of the newly appointed Interim Executive Director of UNOPS that following a trip to Argentina, it was decided to remove the Appellant from his post. Then follows a detailed narration of facts. On 3 March 2006, the Project Management Specialist was informed that his contract would not be extended beyond 31 March. On 8 March, the Appellant reported the alleged wrongdoing of the Project Management Specialist to the Deputy Executive Director, and the

any individual to prove his case. The Dispute Tribunal noted that if the ultimate decision not to renew the contract was affected in a substantial way by prejudice against the Appellant, by his having been a whistle-blower, then the decision was improper leading to a breach of his contract. However, the concept of institutional prejudice was thoroughly discussed but it was not accepted because the decision makers involved were numerous and removed from the allegation that had allegedly motivated the retaliation.

27. The UNDT examined the decisions to remove the Appellant from his portfolio onto ret cis8(An)4.

Judgment

30. In light of the foregoing, we hold that the Judgment of the UNDT does not suffer from any illegality or infirmity requiring interference by us.

Original and Authoritative Version: English

Dated this 11th day of March 2011 in New York, United States.

(Signed)

Judge Garewal, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Painter

Entered in the Register on this 19th day of April 2011 in New York, United States.

(Signed)

Weicheng Lin, Registrar