



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Case Nos. 2010-146 & 147

Shkurtaj

JUDGE MARK P. PAINTER , Presiding.

Synopsis

1. A former staff member has standing to contest an administrative decision concerning him or her if the facts giving rise to his or her complaint arose, partly arose, or flowed from his or her employment. There must be a sufficient nexus between the former employment and the impugned action. We view the trial court's determination of this issue as a factual finding, which we affirm.
2. Damages awarded for violations of due process rights are not exemplary or punitive, but must be awarded with care and be of a reasonable amount. In this case, we affirm that an award is proper, but reduce the amount.
3. This being an appellate court, findings of fact made by the trial court are generally not appealable if supported by the evidence. The alleged error of law in the United Nations Dispute Tribunal's (UNDT or Dispute Tribunal) finding that no retaliation occurred was one of fact, and is affirmed.

Facts and Procedure

4. Artjon Shkurtaj (Shkurtaj) was employed by the United Nations Development Programme (UNDP) in the Democratic People's Republic of Korea (DPRK) first on a Special Services Agreement (SSA) from January 2005 to May 2006 and then on an Appointment of Limited Duration (ALD) from June to September 2006. During this time Shkurtaj raised concerns about certain financial and administrative aspects of UNDP's operations in the DPRK.
5. Following his service with UNDP in the DPRK, Shkurtaj served with UNDP's Bureau of Management, Centre for Business Solutions (CBS), at UNDP headquarters in New York under two SSA agreements, the last of which ended on 26 March 2007. On 5 June 2007, Shkurtaj contacted the United Nations Ethics Office (Ethics Office) to request protection from retaliation. Shkurtaj indicated in his email to the Ethics Office that he believed that his reporting of alleged misconduct by UNDP in 2005 and 2006 improperly influenced the decision by UNDP to allow his contract with CBS to expire in March 2007.

6. According to UNDP's "General Conditions of Contracts for the Special Services Agreement", an "individual contractor shall have the legal status of an independent contractor vis-à-vis the United Nations Development Programme (UNDP), and shall not be regarded, for any purposes, as being [...] a 'staff member' of the UNDP". Thus, on 17 August 2007, the Director of the Ethics Office informed Shkurtaaj that his office did not have jurisdiction over Shkurtaaj's request for

10. The final report of the External Panel of 31 May 2008 determined that UNDP had demonstrated that its actions with respect to Shkurtaj were neither retaliatory, nor were

both cases. It decided that Shkurtaj had standing to file the Ethics Policy Case because during the time that he was a staff member with UNDP, he had raised concerns about possible misconduct at UNDP in the DPRK, and it was this act that led to his request for protection from possible retaliation. The UNDT considered that there was “a sufficient

22. The Secretary-General submits that the Dispute Tribunal erred in law and exceeded its jurisdiction by awarding compensation to Shkurtaj with respect to the Compensation Case.

23. The Secretary-General requests that the Appeals Tribunal overturn Judgment No. UNDT/2010/156 with respect to its findings relating to the Compensation Case.

Shkurtaj's Answer

24. Shkurtaj submits that he was a staff member on ALD during the period of time that the whistle blowing activity took place. Moreover, the UNDT did not invent the term the "extended nexus" test; it is the Secretary-General's term.

25. Shkurtaj submits that damages awarded for violations of due process are neither exemplary nor punitive. Shkurtaj submits that the Secretary-General should honor his commitments regarding the compensation recommended by the Ethics Office.

26. Shkurtaj requests the Appeals Tribunal to reject the Secretary-General's appeal in respect of the Compensation Case and to grant the relief requested in his cross-appeal. Shkurtaj requests the Appeals Tribunal to consider the awarding of costs in the amount of USD 20,000 for the Secretary-General's unwarranted and ill-motivated litigiousness.

Shkurtaj's Cross-Appeal

27. Shkurtaj submits that, with respect to the award of fourteen months' net base salary, he should have been remunerated based on a higher salary rate; that the Secretary-General should be liable for interest on this amount; that the award by the UNDT of USD 5,000 as compensation for the delay is insufficient—Shkurtaj suggests an award of USD 50,000; and that Shkurtaj should be awarded an additional three years' net base salary for "moral damages", and USD 25,000 in legal costs.

Judgment

33. In view of the foregoing, we dismiss Shkurtaj's appeal, grant the Secretary-General's appeal in part, and dismiss Shkurtaj's cross-appeal. The UNDT Judgment is affirmed, except insofar as the fourteen months' compensation is reduced to six months.

Original and Authoritative Version: English

Dated this 8th day of July 2011 in Geneva, Switzerland.

(Signed)

Judge Painter, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Simón

Entered in the Register on this 29th