



JUDGE LUIS MARÍA S

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12. By interoffice memoranda dated 20 and 28 September 2007, the Executive Secretary announced decisions to reorganize his office.

13. By letter dated 5 October 2007, the Administrative Law Unit, Office of Human Resources Management, informed Kaddoura that, following a review of the contested decision, the Secretary-General considered that the decision had not violated her rights.

14. On 4 December 2007, Kaddoura appealed the Secretary-General's decision under the internal justice system then in place. On 28 August 2009, her case was transferred to the Dispute Tribunal in Geneva.

15. On 30 March 2010, the UNDT issued Judgment No. UNDT/2010/050. The UNDT found that the decision taken by the Deputy Executive Secretary on 8 August 2007 was illegal, because there was no evidence that, at that stage, the new Executive Secretary had delegated power to his Deputy to take such decision, and because it was inadequately justified by the Deputy Executive Secretary.

16. The UNDT then went on to determine whether the confirmation decision was lawfully taken. It rejected Kaddoura's contention that the contested decision constituted retaliation by the Deputy Executive Secretary for her reporting of irregularities she had discovered at ESCWA, because the confirmation decision was not taken by the Deputy Executive Secretary, but by the new Executive Secretary who only joined the office on 1 August 2007, and therefore could not be held to have had anything to do with such retaliation.

17. The UNDT further held that the reasons given by the Executive Secretary for his confirmation decision appeared clearly in the memoranda of 20 and 28 September 2007 to the Chief, Administrative Services Division, which show that, after taking up his new duties, the new Executive Secretary wanted to restructure his Office by assigning to the Administrative Services Division a number of administrative tasks previously dealt with by his Office and, in particular, Kaddoura.

18. The UNDT also rejected Kaddoura's contention that she had been replaced in her functions in the Office of the Executive Secretary because the Respondent categorically denied that contention and Kaddoura failed to proffer any evidence to support it. The UNDT concluded that the confirmation decision was lawful.

19. The UNDT ordered the rescission of the original decision dated 8 August 2007 and ordered that Kaddoura be awarded compensation in the amount of her special post allowance that she should have received from 8 to 16 August 2007, the time from the original decision to the confirmation decision.

20. Kaddoura appeals the UNDT Judgment.

Submissions

Kaddoura's Appeal

21. Kaddoura submits that the UNDT violated her due process rights by rejecting her request to present evidence in support of her contention that the new Executive Secretary did not know Kaddoura and had never been consulted or had agreed to her reassignment.

22. Kaddoura further avers that the UNDT erred in fact and law in finding that the memoranda of 20 and 28 September 2007 from the Executive Secretary showed that the new Executive Secretary, a few days after taking up his duties, wanted to restructure his Office by assigning to the Administrative Services Division a number of administrative tasks previously dealt with by his Office and, in particular, Kaddoura. Kaddoura contends that those memoranda could not justify and regularize a posteriori his confirmation decision of 16 August 2007. Moreover, the UNDT failed to consider that the memoranda did not reference the functions that Kaddoura had performed. She contends that the reassignment decision of 8 August 2007 referred to an alleged review of the functions of the Office which did not take place and in support of which the Secretary-General failed to produce evidence. Moreover, neither she nor her supervisor was consulted prior to the original decision.

23. Kaddoura challenges the UNDT's finding that she had not presented any evidence that she had been replaced in the functions she had discharged in the Office of the Executive Secretary. She points to evidence that she alleges the UNDT failed to take into account.

24. Kaddoura challenges the UNDT's order that she be paid compensation in the amount of her special post allowance that she should have received between the time of the original decision and the confirmation decision. She submits that the UNDT itself

noted that Kaddoura ceased to exercise those special functions the day of the original decision. Instead, she should receive compensation for the violation of her due process rights on the basis that the reason given for her reassignment was different from those officially cited, and her reassignment was part of retaliatory actions taken against her.

25. Kaddoura submits that the UNDT failed to exercise the jurisdiction vested in it when it accepted the addendum to her application, but did not consider the claims contained therein.

26. Kaddoura alleges that the UNDT erred by rescinding the original decision on her reassignment, without specifying an amount of compensation that the Administration could elect to pay in lieu of specific performance. She requests that the Appeals Tribunal award compensation representing “compensation in lieu of the rescission” of the contested decision. She seeks reinstatement to ESCWA and, in the alternative, compensation in the amount of two years’ net base salary.

Secretary-General’s Answer

27. The Secretary-General responds that Kaddoura’s submissions regarding the UNDT’s findings with respect to the original decision on her reassignment do not affect the outcome of the Judgment and as such are not receivable.

28. The Secretary-General contends that the UNDT correctly concluded that the reassignment decision was lawful, since the reassignment was based on a reorganization of the Office of the Executive Secretary.

29. The Secretary-General submits that the UNDT did not commit any errors of procedure which warrant a reversal of the UNDT Judgment. He contends that the UNDT correctly declined to consider the additional allegations and related evidence contained in the addendum to Kaddoura’s application. The evidence and allegations contained in the addendum are entirely unrelated to the administrative decision under review.

30. Moreover, the UNDT’s decision not to call certain witnesses does not constitute an error of procedure. The UNDT enjoys a broad discretionary power and may decline to examine or call any witness it deems unnecessary. In the instant case, the UNDT did not deem it necessary to call the two witnesses suggested by Kaddoura.

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administrative decision to transfer Kaddoura, giving his consent to it in that way. Therefore, the main issue in this case was that related to the consequences of that confirmation and that the Dispute Tribunal could disregard evidence that could not affect directly the consideration of that key question. The Dispute Tribunal was authorized, under its Rules, to assess the relevance of the evidence offered by the parties to prove essential facts in the case and to deny receiving evidence related to non relevant facts.

36. Considering the merits of the case, this Tribunal holds that Kaddoura failed to demonstrate that the UNDT erred in concluding that the confirmation decision was lawful and in awarding her compensation only in the amount of the special post allowance she would have received from 8 to 16 August 2007. Similarly, the UNDT did not err by failing to order her reinstatement or compensation in lieu thereof.

37. The UNDT found in favour of Kaddoura, rescinded the decision of 8 August 2007 taken by the Deputy Executive Secretary, and awarded compensation in the amount of the special post allowance she would have received from 8 to 16 August 2007. The UNDT denied her other requests – which are not subject to an appeal – for an award of a higher compensation equivalent to the special post allowance till the end of 2007 and for an appointment at the P-3 level in the Office to which she had been transferred. On appeal, Kaddoura seeks a much higher compensation, and reinstatement or compensation of two years' net base salary in lieu of reinstatement.

38. The Executive Secretary had the authority to reassign Kaddoura, and Kaddoura has not demonstrated that the decision was arbitrary, biased, discriminatory or it violated her rights. The decision taken by the Deputy Executive Secretary, which was found unlawful by the UNDT, does not result in the illegality of the later confirmation act. This Tribunal does not accept Kaddoura's contention that the illegality of the decision taken by the Deputy Executive Secretary on 8 August 2007 extended automatically to the decision adopted by the Executive Secretary himself on 16 August 2007. The illegal reassignment of 8 August was not an obstacle to a valid reassignment on 16 August, by a new decision, taken independently, objectively, and by the proper authority. Therefore, this second decision is valid, despite the irregularity of the previous one. This conclusion does not imply a retroactive validation of a previous invalid action, as Kaddoura alleges. It simply recognizes the lawful consequences of a later valid

decision. Essentially, this is what happened when the Executive Secretary confirmed the reassignment because, by so doing, the ESCWA Administration adopted again the will to transfer, from the competent authority and, in a valid way in this instance. Even Kaddoura acknowledges that there was no question of retaliation or discrimination against her regarding the Executive Secretary's conduct. Hence, the decision to reassign was taken within the discretion of the Administration and without violation of the law.

39. Kaddoura's arguments related to the delegation of authority, the restructuring of the office, or the lack of consultation of her supervisor or herself do not invalidate the main argument in support of the impugned Judgment: The Executive Secretary had the power to order the reassignment and there is no evidence that he abused that power.

40. It must be taken into account that the reassignment did not affect the position held by Kaddoura; that she had no right to be consulted; that she failed to substantiate her allegation that another person performed her functions; that she was awarded an amount corresponding to the special post allowance for the period of time between the unlawful decision of 8 August 2007 and the lawful one of 16 August 2007; and that she had no right to be reinstated to the Office of the Executive Secretary after 16 August 2007 because that post had been vacant even during the period of her reassignment. (para. 23)

Judgment

43. This Court affirms the UNDT Judgment and dismisses the appeal.

Original and Authoritative Version: English

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

(Signed)

Judge Simón, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Faherty

Entered in the Register on this 29th day of August 2011 in New York, United States.

(Signed)

Weicheng Lin, Registrar