



JUDGE LUIS MARÍA SIMÓN, Presiding.

Synopsis

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal by Ms. Susan Squassoni against Judgment No. UNDT/2011/070 and Order No. 315 (NY/2010) rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 13 April 2011 and 2 December 2010, respectively, in the case of *Squassoni v. Secretary-General of the United Nations*.

2. It was determined in this case that without regard to the procedural regularity or irregularity of the UNDT's Orders related to the scope of the parties' submissions with respect to the appeal filed by the staff member, as the final Judgment did not rely only on those orders to dispose of the case, but also examined ex officio all the issues, there are no grounds to consider that the claimant's right to due process was violated by a judgment by default or for not considering her arguments.

3. This Tribunal holds that the UNDT did not err when it concluded that there was no administrative decision concerning the return to the blocked post at the G4 level occupied by the staff member that could be judicially reviewed under Article 2(1) of the UNDT Statute, because that return constituted the predictable and logical outcome of the non-selection of the claimant for two G-5 posts she had applied for, which were filled up, causing the end of the temporary assignment.

Facts and Procedure

4. Ms. Squassoni joined the Organization at the G-2 level in June 1979, and advanced to the G-3 level in 1981 and the G-4 level in 1984. At the time of the events, Ms. Squassoni worked for the Department of Political Affairs (DPA).

5. Effective 28 May 2003, Ms. Squassoni was reassigned within DPA from the Electoral Assistance Division (EAD) to the Asia Pacific Division (APD) as a maternity leave replacement, encumbering the post of Social Sciences Assistant at the G-5 level. Her reassignment was approved by her parent office, EAD, so that her post there was blocked

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accept the JAB's recommendation to place Ms. Squassoni on a roster at the G-5 level. Neither did the Secretary-General accept the JAB's finding with regard to Ms. Squassoni's return to EAD. He noted that Ms. Squassoni had been temporarily assigned to APD while maintaining a lien on her G-4 post at EAD. Ms. Squassoni was supposed to return to her EAD post at the end of her temporary assignment at APD, and there was no justification for the JAB's finding that "there was an element of harassment in returning [Ms. Squassoni] to her former post".

12. Ms. Squassoni filed an application with the former Administrative Tribunal on 28 January 2009. She requested inter alia the rescission of her non-selection for either of the two G-5 vacancies and the rescission of the decision "compelling [her] to return to work at the Electoral Assistance Division". The Secretary-General filed an answer on 24 July 2009, in which he inter alia questioned the receivability of Ms. Squassoni's application concerning her return to EAD, as that action "[did] not constitute an administrative decision".

13. The former Administrative Tribunal did not have an opportunity to review Ms. Squassoni's case before its abolition at the end of 2009. The case was transferred to the UNDT on 1 January 2010.

14. On 20 April 2010, the UNDT issued Order No. 090 (NY/2010). The parties were ordered to file a joint submission identifying areas of agreement and disagreement on certain outstanding issues. The UNDT stressed: "Where an item is disagreed, the disagreement and the parties' respective positions shall be identified clearly in the response. Parties shall avoid the simple repetition of information that is already before the Tribunal."

15. On 14 June 2010, the parties filed a joint statement pursuant to Order No. 090 (NY/2010). In response to the UNDT's question as to whether the parties agreed on the legal issues in the case, the parties stated that they did not reach any agreement. They then laid out their respective positions. In Ms. Squassoni's view, the compensation that she had received for the Administration's failure to give her full and fair consideration in the selection for the G-5 positions was inadequate. She also requested "moral, psychological and physical damages" for the decision to return her to EAD. According to the Respondent, the issues in this case were i) whether Ms. Squassoni was adequately compensated for the procedural irregularities in relation to her applications for

the two G-5 posts; ii) whether her return to EAD constituted an appealable administrative decision; and iii) whether her workplace safety was endangered upon her return to EAD.

16. On 4 October 2010, the UNDT issued Order No. 262 (NY/2010), in which it ordered Ms. Squassoni to file, by 15 October 2010, “[a] listing of all specific administrative decision(s)”¹ that she was appealing. Moreover, the UNDT ordered Ms. Squassoni to “file and serve a written submission responding to any receivability arguments the respondent may have made”, by 29 October 2010.

17. On 15 October 2010, Ms. Squassoni filed a response to the UNDT Order No. 262(NY/2010). She listed as contested administrative decisions her non-selection to either of the two G-5 posts; her return to EAD; the decision to maintain her at EAD; and the decision to only award her compensation in the amount of six months’ net base salary.

18. On 22 October 2010, the Respondent filed a response to the UNDT Order No. 262 (NY/2010). The Respondent maintained inter alia that the six months’ net base salary awarded to Ms. Squassoni represented “adequate compensation” in connection with the two G-5 posts, but that Ms. Squassoni’s contentions in respect of her return to EAD were “not receivable, *ratione materiae* as there is no appealable administrative decision”.

19. In Order No. 315 (NY/2010) dated 2 December 2010, the UNDT found that, by failing to respond to the Respondent’s receivability challenge, Ms. Squassoni agreed with the Respondent. Her appeal regarding her return to EAD was therefore not receivable, and accordingly, the only remaining issue before the UNDT was the adequacy of the compensation already awarded to Ms. Squassoni.

20. On 20 December 2010, Ms. Squassoni filed a motion seeking revision of the UNDT Order No. 315 (NY/2010). She apologized for her misinterpretation of the Order, as she thought that “[a]s [her] contentions on receivability were already argued and on record..., counsel chose to strictly comply with her Honor’s instruction, and to [avoid] repeating [her] earlier contentions on this issue of receivability”. She denied agreeing to the Respondent’s non-receivability contentions. Ms. Squassoni asked the UNDT to review the issue of her return to EAD.

¹ Emphasis in original.

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did not constitute an administrative decision; it was merely the logical and direct consequence of her not being selected for either of the two G-5 posts and the end of her temporary assignment with APD. The UNDT's determination on this issue 5(i)-4sc 0.012q9[it(e)-6ent rth

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