



1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Françoise Laurantzen on 1 May 2012 against Judgment No. UNDT/2010/172, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 27 September 2010. The Secretary-General filed an answer on 13 July 2012.

Facts and Procedure

2. The following facts are uncontested:¹

... The Applicant entered the service of [the United Nations High Commissioner for Refugees (UNHCR)] on 23 October 1978 as a Clerk-Typist, G-3 level, in Rome, Italy. In 1980, the Applicant's appointment was converted from the General Service (G) category to the Professional (P) category. On 1 July 1988, her fixed-term appointment was converted to indefinite (100 series of the former Staff Rules, rule 104.12(c)). On 1 January 1999, the Applicant was promoted to P-5 level, and on 1 February 2002, she was appointed as UNHCR Representative in Budapest, Hungary.

... At the time, the UNHCR Representation in Hungary and the Regional Support Unit for Budapest ("RSUB") shared the same premises in Budapest, the former providing administrative support to the latter but not having any direct authority over its activities. Both the Representation and RSUB reported directly to the Regional Bureau for Europe ("RBE"), at UNHCR Headquarters in Geneva.

... In March and April 2003, within the framework of exchanges of emails concerning a clarification of reporting lines and roles for all UNHCR staff based in Budapest, the Director, RBE, asked the Applicant to provide him with a written assessment of the situation regarding relations between the Representation and

... In October 2003, the Senior Administrative Officer, RBE, undertook a mission to Budapest to clarify the respective responsibilities of the Representation and RSUB.

... From 3 to 4 November 2003, the Director, RBE, and the Head of the Political Unit, RBE (who at the time was the RSUB supervisor), undertook a mission to Budapest in order to review interpersonal problems between the Applicant and RSUB.

... On 17 November 2003, the entire staff of the UNHCR Representation in Hungary, including the Applicant, signed and sent to Headquarters, with a copy to the Director, RBE, a petition against the Senior Regional Programme Officer, RSUB.

... By email dated 21 November 2003, the Director, RBE, criticised the Applicant for signing the petition in question. He considered that such an act on the part of a manager was inappropriate, all the more so as it could only exacerbate existing tensions in Budapest.

... By email dated 19 January 2004, the Director, RBE, forwarded to the Applicant his report dated 9 January 2004 on his mission of 3-4 November 2003 to Budapest. In his email, the Director regretted that the situation in Budapest did not seem to have improved since his mission, as could be seen by the petition against the Senior Regional Programme Officer, and asked the Applicant to come to Geneva to discuss the measures he intended to take in order to follow up his mission report and to put an end to a dysfunctional situation that had gone on too long. As for the report, it concluded that problems were largely personality rather than structurally driven and that there was a level of tension between the Applicant on the one hand and the

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... On 29 January 2004, the Applicant travelled to UNHCR Headquarters in Geneva to discuss the above-mentioned report with the Director, RBE. At the meeting, the Director informed the Applicant that, given the situation in Budapest, he had decided—in consultation with the High Commissioner—to withdraw her from her functions as Representative, effective as of 1 March 2004. That same day, he sent the Applicant a note for the record on the meeting and gave her the opportunity to submit comments.

... On 30 January 2004, the Applicant sent an email to the High Commissioner requesting an inspection in Budapest prior to her withdrawal.

... By email dated 4 February 2004, the Applicant asked the Director, RBE, when the Division of Human Resources Mana

... On 18 February 2004, the Applicant wrote to the Secretary of the Geneva Joint Appeals Board ("JAB") to request a suspension of action. On 25 February 2004, the JAB recommended to the Secretary-General to reject the Applicant's request for suspension of action. The Secretary-General accepted the said recommendation the following day.

... On 10 March 2004, the Applicant provided the Administration with a medical certificate.

... On 24 March 2004, the Director, DHRM, informed the Applicant of the High Commissioner's decision to appoint her as Chief of Mission in Turkmenistan.

... The Applicant did not take up her functions because she was placed on sick leave from 28 April 2004 until 31 July 2004. As of that date, she remained on special leave with full pay until her retirement on 30 June 2008.

... On 11 May 2004, the Applicant lodged an appeal with the Geneva JAB.

... On 6 July 2004, the Applicant submitted a request to the Special Constraints Panel ("SCP") for an exception to the staff rotation policy, due to the health status of a

... By letter dated 19 December 2006, which the Applicant says she never received, the Under-Secretary-General for Management forwarded to the Applicant a copy of the JAB report and informed her of the Secretary-General's decision to follow the JAB recommendation and not to take any further action in the case.

...

... On 6 May 2008, after having requested and received two extensions from the former Administrative Tribunal, the Applicant submitted her appeal.

... On 30 June 2008, the Applicant retired, having reached mandatory retirement age.

...

... The case, on which the former Administrative Tribunal was unable to rule before it was abolished on 31 December 2009, was transferred to the United Nations Dispute Tribunal on 1 January 2010.

...

... By letter dated 2 September 2010, the Applicant informed the Tribunal that she wished to call two witnesses to the hearing and asked to be given until 15 September 2010 to disclose their identity. On 3 September 2010, the Tribunal answered, asking the Applicant to submit their written testimony no later than 14 September 2010.

... By email dated 14 September 2010, the Applicant submitted to the Tribunal the testimonies of three serving or former staff members of UNHCR. The Tribunal received a signed version of the said testimonies on 15, 19 and 20 September 2010, respectively.

3. The UNDT in Geneva rendered Judgment No. UNDT/2010/172 on 27 September 2010. The UNDT found that Ms. Lauritzen had failed to establish that the decision to remove her from her post in Budapest and the decision to place her on SLWFP were illegal. It, however, found that the decision to keep her on SLWFP as a SIBA for over four years, until her retirement, was not legal and awarded USD 15,000 as moral damages.

Submissions

Ms. Lauritzen's Appeal

4. Ms. Lauritzen submits that the UNDT erred in determining that her withdrawal as Representative in Hungary was lawful when it in fact was a disguised disciplinary measure. She

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Appeal

21. This appeal stems from the removal of Ms. Lauritzen as the UNHCR Representative in Budapest, Hungary, on 1 March 2004, and her placement on SLWFP as a SIBA until her retirement on 30 June 2008.

22. Ms. Lauritzen's appeal is based on grounds of procedural errors, as well as errors of law and fact under Article 2(1) of the Statute of the Appeals Tribunal.

Procedural Errors

23. Ms. Lauritzen submits that her due process rights were violated as the UNDT did not allow an oral examination of her witnesses but decided that these witnesses present their evidence in writing. The Tribunal found that the UNDT's decision to rely on written evidence was a procedural error.

27. The UNDT exercised its discretion and directed that the witnesses of Ms. Lauritzen present their testimonies in written form, with which two complied. Ms. Lauritzen has not demonstrated how the procedure adopted affected or violated her due process rights. The appeal on this ground is dismissed.

Errors of law and fact

Did the UNDT err in law or fact in determining that her withdrawal as Representative in Hungary was lawful?

28. Staff Regulation 1.2(c) provides: “Staff members are subject to the authority of the Secretary-General and to assignment by him or her to any activities or offices of the United Nations. ...” Staff Regulation 1.2(c) thus gives the Secretary-General broad discretionary powers when it comes to organization of work. It is well established that, notwithstanding the width of the discretion conferred by this provision, it is not unfettered and can be challenged on the basis that the decision is arbitrary or taken in violation of mandatory procedures or based on improper motives or bad faith.

29. Ms. Lauritzen submits that the UNDT erred in determining that her withdrawal as Hungary Representative was lawful when it in fact was a disguised disciplinary measure. In her view, the only reasonable inference that can be drawn is that her signing the confidential petition against the Senior Regional Programme Officer was the reason for her removal from her post, especially in light of the report of the Director, RBE.

30. Ms. Lauritzen complains that the UNDT was not determinative of whether or not her removal from her post was not a disguised disciplinary measure.

31. From the uncontested facts cited in paragraph 2 above, the disagreements between Ms. Lauritzen and the Senior Regional Programme Officer negatively impacted on the smooth running of affairs in Budapest.

32. The UNDT stated in paragraphs 54 and 55 of its Judgment:

... It emerges from these missions and reports that [the] problems were largely personality rather than structurally driven. The Applicant’s supervisors did not criticize her for misconduct which could give rise to disciplinary proceedings, but at most for professional behaviour which reflected her inability to resolve the

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from submitting her written observations on that report which, moreover, she was asked to come to Geneva to discuss. On 29 January 2004, the Applicant thus had a meeting with the Director, RBE, in the course of which she was informed of his decision, taken in consultation with the High Commissioner, to remove her from her post. Subsequently, she had an opportunity to comment on the note for the record on that meeting.

38. We therefore find no merit in this ground of appeal.

39. There were several options open to put an end to the situation in the Budapest Office. This Tribunal is of the view, given the broad discretionary powers that Staff Regulation 1.2(c) gives the Secretary-General when it comes to organization of work, that it was entirely within the discretion of the Secretary-General to decide to remove her from the post. We recall what this Tribunal stated in *Sanwidi*:

When judging the validity of the Secretary-General's exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General.⁴

40. The UNDT correctly judged the validity of the Secretary-General's exercise of discretion in administrative matters. We affirm the finding by the UNDT that the withdrawal of Ms. Lauritzen from the Budapest post was lawful.

41.

42. We find that UNHCR's failure to assign Ms. Lauritzen to an alternate post commensurate with her grade, training, skills and experience, and its failure to recommend her for any other job for fifty-two months is unacceptable, unproductive, and demonstrates poor management of the financial interests of the Organization. As long as Ms. Lauritzen remained a UNHCR staff member, she not only was entitled to be paid but also had a right to be given work. It is the moral right of a staff member to be given work to do in order to earn his or her salary.

43. This Tribunal, in *Parker*,⁵ found that the practice of placing staff on SLWFP for a long period is unproductive and not in the interest of the Organization. The jurisprudence of the former Administrative Tribunal also found the practice unacceptable.⁶ "A staff member is greatly harmed when confined to staying home without duties or office, resulting in a loss of self respect and morale."⁷ Similarly, the Administrative Tribunal of the International Labour Organization (ILOAT) has held that "[a] decision to place a senior officer on leave with or without pay ... is one that will almost certainly carry adverse consequences for his or her career. Where, as here, the decision is unlawful, the person concerned is entitled to compensation."⁸

44. The UNDT correctly held that Ms. Lauritzen must be compensated for the moral damage she suffered flowing from the illegality committed by keeping her on SLWFP as a SIBA for more than four years. Ms. Lauritzen was awarded USD 15,000.

45. Ms. Lauritzen complains that the UNDT failed among others things to attach sufficient weight to the damage to her reputation and dignity and to the stress and uncertainty she endured over 52 months. She thus asks for enhanced damages in the amount of USD 250,000 or the equivalent of two years' net basesalary, whichever is greater.

46. We note that the UNDT considered all these factors before reaching the quantum awarded. In particular, the UNDT considered that

the illness certified for the period of December 2007 to March 2008 can be at least partly ascribed to her being kept inactive. In addition, the Applicant, who applied for a great many posts unsuccessfully and without receiving any serious job offers from UNHCR, became increasingly anxious as time passed and her retirement date came

⁵ *Parker v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-012.

⁶ Former Administrative Tribunal Judgment No. 1411 (2008).

⁷ Former Administrative Tribunal Judgment No. 1172 (2004), para. X.

⁸ ILOAT Judgment No. 2324 (2004), para. 13.

closer. Finally, the Applicant explained at the hearing that owing to the long period of inactivity, she had lost all of her contacts at UNHCR and her desire to work in the humanitarian sector after she retired had been negatively affected.

47. Accordingly, we find the compensation awarded to be adequate. The appeal on this ground is also dismissed.

Judgment

48. The appeal is without merit and is dismissed in its entirety. The UNDT Judgment is affirmed.

Original and Authoritative Version: English

Dated this 28th day of March 2013 in New York, United States.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Simón

(Signed)

Judge Faherty

Entered in the Register on this 24th day of May 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar