
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2012/012

Judgment No.: UNDT/2016/096

Date: 1 July 2016

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar:

Facts

5. The Applicant joined the Organization and first worked as a Security Officer at the FS-5 level with the United Nations Mission in Kosovo from June 2001 until November 2003.

6. In January 2005 he rejoined the Organization as a Training Officer with UNAMI and later became a Security Officer at the P-3 level under a fixed term appointment, limited in service to UNAMI.

7. From 1 January 2009, the Applicant worked in the Security and Safety Unit (SSU) as a Security Officer. He rotated regularly between duty stations in Baghdad, Iraq and Amman, Jordan. In April 2009, the Applicant was transferred to Amman, Jordan to serve as a Security Awareness Induction Training (Srity) 482JEL-sAe1 0 0.

12. The Applicant was advised by Dr. Lennartz, in an email dated 20 May 2009, to provide a medical report to Dr. Tiwathia Adarsh of MSD in New York and was also informed that he needed to obtain medical clearance from the MSD in order to return to work at the mission.

13. On 1 June 2009, the Applicant was directed in an automated message by Dr. Adarsh (who was out of office) to contact one Dr. Surachai also at MSD. On 3 June 2009, Dr. Surachai

19. Following the submission of the psychiatric report to the MSD on 20 November 2009, Dr. Adarsh wrote to the Chief of Mission Support (CMS) at UNAMI on 30 November 2009, informing him that the Applicant was medically cleared to return to the Mission but that he may only be assigned to Jordan and Kuwait but not Iraq.

20. The Applicant was not informed of this development by MSD or UNAMI at that time nor was he asked to return to work. On 13 January 2010, the CMO/UNAMI, Dr. Lennartz, wrote to the Applicant informing him that he had been medically cleared to return to the Mission as of 30 November 2009 and that he was surprised that the Applicant was not informed by headquarters about this.

21. Thereafter on 1 April 2010, Dr. Adarsh wrote to the UNAMI CMS, Mr. Sellers, informing him that the Applicant's doctors had been reviewed by MSD and that based on the medical information provided, the Applicant was NOT medically fit to return to UNAMI. No reference was made to the earlier medical clearance sent to the Mission on 30 November 2009.

22. On 7 April 2010, Ms. Muhoho, Chief, Human Resources Section, UNAMI, informed the Applicant that as from 17 February 2010, he had exhausted his sick leave entitlements with full pay of 195 working days since he was declared medically unfit to return to duty. UNAMI, she said, would make a request to the United Nations Joint Staff Pension Fund (UNJSPF) to award him a disability benefit.

23. The Applicant wrote to Dr. Adarsh on 9 April 2010, expressing his disagreement over the fact that he was still not cleared to return to work against his doctors' recommendations. Dr. Adarsh responded by informing him to file a compensation claim with the Advisory Board on Compensation Claims (ABCC) and sending him the relevant forms for compensation claim.

24. Dr. Boulay then wrote again to Dr. Adarsh on 7 June 2010 stating that it was his professional opinion that the Applicant was cleared to return to work and that

is incorrect because DFS informed him verbally on numerous occasions why he was not medically cleared.

h. UNAMI reimbursed the Applicant with travel expenses associated with his return to the mission.

i. There were no procedural irregularities or abuse of the due process rights of the Applicant at any time.

Issues

39. Having considered the case as set out by the parties, the Tribunal will hereunder formulate the issues for determination as follows:

a. Were there any improprieties, abuse or negligence on the part of the MSD when after issuing a medical clearance on 30 November 2009 for the Applicant to return to work at UNAMI, it turned around four months later to issue another decision withholding medical clearance without any changes in the circumstances of the said Applicant? Was the Applicant entitled to know why the MSD considered him unfit for service in UNAMI in April 2010? If he was so entitled, was that information made available to him?

b. Did UNAMI have any existing policy at any time requiring that all mission staff be cleared for the entire mission area in order to be assigned to duties in any of its three duty stations?

c. FkfvjgCr rnkcpv ø u" hcknwtg" vq" eq o r n t lmeously ykvj" vjg" OUF ø u" directive to have his psychiatric report submitted to it contribute to the undue prolongation of his sick leave?

d. To what extent did conflicting information on the part of the Cf o kpkvutcvkqp" chhgev" vjg" Cr rnkcpv ø u" tk i jvuA"

Case No. UNDT/NBI/2012/12

Judgment No. UNDT/2016/096

55. Further, the Tribunal was not told when and how the MSD came to know about the requirement that medical clearance for UNAMI staff members must cover the entire mission area including Iraq. If the MSD knew that such a policy or requirement existed at UNAMI, why did it send the medical clearance of 30 November 2009?

56. Did the MSD come into this knowledge before clearing the Applicant on 30 November 2009? Or did it come to know about the policy and requirement of the mission thereafter? Who informed the MSD of the said requirement and when was this information given? Was it in writing? Was the MSD shown the UNAMI policy?

57. The answer to 28(re)7sed s

formed a continuum during which the Applicant was kept in limbo; unaware, unsure and in a lingering state of confusion regarding his employment.

90. It was not until the Applicant was brought back to service in August 2011 that he could determine the finality of the different administrative decisions that were taken with regard to his unduly prolonged sick leave. The incompetence of the impugned set of actions did not become immediately evident until the Applicant returned to duty.

91. On 11 August 2011,

through his own efforts was able to secure medical clearance for the entire Mission area including Iraq, he has been informed that upper management wanted to fire him.

95. On 30 April 2014, the Respondent filed his opposition to the motion. He argued that since the subject matter of the amendment sought to be made constituted new claims, they could not be allowed to form part of the on-going case since they had not been the subject of management evaluation or the administrative procedure in ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority).

96. The Tribunal having considered the submissions on both sides, hereby rules that the motion is refused. The new claims sought to be allowed as part of this case which was instituted in 2012 are separate and distinct issues which cannot form part of the instant case. Moreover, the new claims and developments ought to be first referred to management evaluation.

Summary of findings and conclusions.

97. On 11 November 2009, through the withdrawal of that medical clearance and the reinstatement of the same medical clearance on 21 July 2011 which enabled the Applicant to return to UNAMI, a period of about 20 months had elapsed during which the Applicant was kept in some kind of limbo with regard to his job, career and finances.

98. In spite of claiming that there was a requirement that all UNAMI staff members had to be cleared medically for the entire mission area including Iraq, the existence of such a policy was never proven as it was not placed before the Applicant. Therefore, there is no documentation to prove this assertion.

99. In regard to his job,

100. Although the prolonged delay by UNAMI administration and the MSD, it is obvious that some part of that delay was caused by the Applicant himself.

101. The Applicant's psychiatric assessment while in Canada did in fact contribute to the delay in attending to his medical clearance by the MSD. Therefore the delay between May 2009 and 30 November 2009 cannot be laid at the doorstep of the MSD or the Organization.

102. During the prolonged sick leave which the Applicant endured, he had continued to receive conflicting information from the Administration regarding the status of his employment and health which contributed to heighten his anxiety at that time.

103. Due to sheer incompetence, the staff members did not exhibit professionalism when they failed in their duty to give proper, timely and accurate information regarding his employment and health status to the Applicant. They failed also to exhibit the core competency of communication which is required of every staff member.

Conclusion

104. The facts of this case show that the Applicant should have returned to work upon receiving medical clearance on 30 November 2009. The Tribunal therefore orders the Respondent to pay the Applicant his full salary from 30 November 2009 to 1 August 2011 (less any payments that had been made to him such as full salary and half salary during the said period.) In calculating payments due to the Applicant, the hazard pay component of his salary is not to be included since he was in fact outside of the mission area during the period.

105. The Tribunal is also convinced by the submissions made by the Applicant⁴

Case No. UNDT/NBI/2012/12

Judgment No. UNDT/2016/096