
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2019/040
Judgment No.: UNDT/2020/159
Date: 31 August 2020
Original: English

Before: Judge Joelle Adda
Registry: New York
Registrar: Nerea Suero Fontecha

KHANE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Brandon Gardner, OSLA

Counsel for Respondent:
Alan Gutman, ALD/OHR, UN Secretariat

Introduction

1. On 18 June 2019, the Applicant, a former Senior Political Affairs Officer and Secretary of the Third Committee in the United Nations Secretariat, filed the

Political Affairs Officer/Secretary of a Main Committee of the General Assembly to Senior Programme Management Officer, Central Planning and Coordination Division/[Department of General Assembly and Conference Management

2. On 18 July 2019, the Respondent duly filed the reply in which he contends that

the Applicant is without seniority. (r)419(6No.)419(7(12 T-19(9O(N5(dY-7(r/020)))19(8da)4(ted)419(7(2

3. On 1 June 2020, the case was assigned to the undersigned Judge.

4. By Order No. 95 (NY/2020) dated 2 June 2020, the Tribunal ordered the parties to file: (a) additional submissions with, as relevant, documentation on the post of Senior Programme Management Officer and how this post is commensurate with his skills, competencies and experiences and their comments

Facts

7. The parties set out the agreed facts in response to Order No. 95 (NY/2020) as follows:

On 13 November 2018, during the 47th

f. [redacted] accepts the PR of [a Member State] right to lodge a complaint prior to [the USG/DGACM] acting on this complaint, the Administration should have: (i) conducted a formal investigation; (ii) provided [the Applicant] a copy of all relevant documents; and (iii) afforded [the Applicant] a right to respond to the allegations in writing. In such a case, it would also have been prudent to afford the Chair of the Committee an opportunity to respond to the allegations in writing as well, because in that capacity, he was ultimately responsible for the conduct of the proceedings and any alleged improprieties. Instead, [redacted] conducted a very limited review of the complaint herself. Specifically, besides a first meeting with the Applicant, the [redacted] met with the Chair of the Third Committee and two other unnamed ambassadors/Permanent Representatives (out of 193) before concluding that [the Applicant] had lost the confidence of Member States and could, therefore, no longer serve as Secretary of the Third Committee

g. The [redacted] established conduct ran afoul of its obligations to provide him due process. [redacted] neither divested herself of the matter nor appointed an independent fact-finder to establish the facts to inform her decision. Rather, [redacted] chose to herself conduct a cursory review of the allegations and then, in effect, relieved [the Applicant] of his Secretary function. Until now, [redacted] as not been provided the opportunity to review and comment on the relevant communications. The [redacted] due process rights were sacrificed at the altar of political expediency to dispense of a so-called political problem, which violated the [redacted] obligation to treat its staff fairly, justly and transparently. For this reason alone, the improper motivations behind the transfer should vitiate the impugned decision to reassign [redacted] to the new post.

14. In the present case, the parties agree that the USG/DGACM decided to transfer the Applicant from the post of Senior Political Affairs Officer/Secretary of the Third Committee to the post of Senior Programme Management Officer, Central Planning and Coordination Division/DGACM, in response to a complaint from the PR of a Member State a situation that occurred at the 47th meeting of the Third Committee of the General Assembly (although the Respondent in his closing statement also refers to some other matters). As such, the Applicant does not argue that the USG/DGACM herself held any improper prejudice, resentment or bias against him, but rather that under the circumstances, transferring the Applicant to another post was an inappropriate course of action in violation of art. 100 of United Nations Charter and a disguised disciplinary sanction.

15. UndeF1 12 Tf1 0 0 1 168.5 677.62 Tm0 g0 G[(fr)76-JETQ] 0 1612 792 reW*nBT/F1 12 Tf1 0 0 1 1

thereof, was somehow involved (see, for instance, *Kallon* 2017-UNAT-742

managerial

28. Consequently, the Tribunal finds that the post of Senior Programme Management Officer was properly competencies and experiences.

Conclusion

29. The application is rejected.

(Signed)

Judge Joelle Adda

Dated this 31st day of August 2020

Entered in the Register on this 31st day of August 2020

(Signed)

Nerea Suero Fontecha, Registrar