
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2019/072

Judgment No.: UNDT/2021/006

Date: 2 February 2021

Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

SILVA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Dorota Banaszewska, OSLA

Counsel for Respondent:

Jérôme Blanchard, UNOG/LPAS

Case No. UNDT/NY/2019/072

Judgment

from her tenure as Second Vice-President of UNSU, and the operational challenges those conflicts would pose to AAS

minimum be consulted about such transfer before the final decision is made and priorly be provided with a genuine opportunity to comment thereon (see *Chemingui*, paras. 39, as quoted above, and 45).

19. the Applicant was not provided with any information about her transfer away from AAS before the 28 March 2019 meeting with the Chief of AAS, and rather than a meaningful consultation about the decision, she was therefore presented with a *fait accompli* about the transfer away from AAS. The fact that the Applicant served as Second Vice-President of UNSU on a full-time basis rather than a half-time basis did not by itself inform her that her tenure with UNSU would subsequently impede her from returning to AAS this consequence is nowhere stipulated in the relevant legal framework. Nor does it follow from the case record that she had been otherwise apprised about the decision before the 28 March 2019 meeting. The only consultation, if any, which was undertaken with the Applicant was regarding where in result of the decision to remove her from AAS she would rather

Was there a conflict of interest?

22. The Applicant

the internal justice system of the Organization to change jobs between different

appropriate consultation concerning the reassignment since a text message or a brief conversation initiated by the Applicant on 28 March 2019 with [Chief of AAS] can hardly be described as a proper notification, let alone consultation ; the fact that reassignment to GSPD came about in the absence of a job specification, reporting structure or direction as to its longevity .

38. The Applicant contends that the circumstances surrounding her reassignment the Administration did not have any valid reason to reassign [her], apart from its own bias towards a staff member who is subject of an investigation ative to simply dispose of a staff member who is subject of allegations of misconduct to another administrative entity , and uch prerogative would equal to a disciplinary measure not listed in the closed catalogue of Staff Rule 10.2(a) and imposed while the investigation is still pending .

39. The Applicant submits that allegations of bias are extremely difficult to prove the Tribunal must be prepared to draw inferences from the primary facts ,

51. Upon review of these witness statements, the Tribunal finds that it is not necessary for any of the proposed witnesses to appear before it as these statements provide a sufficient evidentiary basis for its determination on remedies:

a. In a medical statement dated 15 October 2020, a medical doctor from the New York-Presbyterian states that the Applicant is under her/his medical treatment

. From another document follows that the medical doctor prescribed some medication to the Applicant on 13 November 2019;

b. A different medical doctor from the New York-Presbyterian on 15 October 2020 states in a medical statement that s/he had examined the Applicant. A nBT/F1 [(in)4.q0.004B00.00]tatement

52. Common for all the medical apparently worsened since her transfer away from AAS and that this may have been exacerbated by work-related reasons, which, however, remain mostly unspecified. In this regard, the Tribunal notes that subsequent to transfer, some affairs related to the Applicant Vice-President of UNSU have also been subject of a disciplinary investigation for some very serious alleged wrongdoings.

53. Whereas the Tribunal recognizes that being forced to change job for a wrong reason may have caused the Applicant some stress, it further notes that the Applicant has simultaneously been under investigation for transgressions, which has placed her employment with the Organization in a much more precarious situation. The Tribunal different sufferings can only to a limited extent be attributed to the unlawful transfer, which justifies granting only moral damages on the lower spectrum of non-pecuniary compensation.

54. , these solely demonstrate that the Applicant is a well-liked individual with a pleasant personality, who has experienced certain difficulties after her transfer away from AAS. This, however, does not by itself

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