

JUDGE LESLIE FORMINE FORBANG , PRESIDING .

1. AAR, a P-3 Security Coordination Officer with the United Nations Department of Safety and Security (UNDSS) in Somalia contested before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) the decision to issue a written reprimand and to place it in his Official Status File (contested decision). By Judgment No. UNDT/2022/133 (impugned Judgment) , the UNDT granted the application, in part. The UNDT affirmed the contested decision, but awarded AAR USD 5,000 for moral harm caused by the delay of almost two and a half years to finalize the disciplinary process.

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2. AAR and the Secretary-General both appealed against the Judgment before the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).

3. For the reasons that follow, we dismiss both appeal

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13. On 9 March 2017, the CDU contacted AAR to discuss the case and forwarded the

THE UNITED NATIONS APPEALS T

process.²¹ After assessing AAR's alleged harm and evidence, the UNDT found "a causal link between the undue delay in completing the disciplinary process and the deterioration of [AAR's] mental health and well-being".²² On this basis, the UNDT awarded AAR USD 5,000 for moral harm.

24. On 14 February 2023, AAR filed an appeal of Judgment No. UNDT/2022/133 . The Secretary-General filed his answer on 24 April 2023.

25. On 20 February 2023, the Secretary-General also filed an appeal. AAR did not file an answer to the Secretary-General's appeal.

Submissions

AAR's Appeal

26. With respect to the scope of review, AAR claims that he has been "criticized for reasonable managerial decisions" which were "seen in isolation" because OIOS and the UNDT "ignored" Ms. A's prior unsubstantiated complaints; that the "starting point" for the Ethics Office inquiry and OIOS investigation should have been those prior complaints; that "no action" was taken against Ms. A; that the Ethics Office misrepresented to OIOS that AAR was the reason why an informal resolution with Ms. A had been unsuccessful, claiming he was kept "in the dark" by the Ethics Office; and that AAR was reprimanded for actions done as part of his official functions.

27. AAR claims that the UNDT erred in finding that the Administration had established by a preponderance of the evidence that he had disclosed confidential information to the former CSO regarding Ms. A's allegations of a sexual nature against the former CSO contrary to AAR's obligations under ST/SGB/2008/5, and thereby had committed misconduct. The UNDT's finding rests upon fundamental errors of fact and is "misplaced", because Ms. A did not make a sexual harassment complaint, but only a suggestion that her reassignment might have been improperly motivated. AAR

complaint to the SRSG. Lastly, AAR also contends that the “criticism” of his actions was “entirely removed from the context in which it occurred”.

28. AAR claims that the “criticism” of his failure to declare a conflict of interest and to recuse himself from participating in the slander case is based on mistakes of fact. The UNDT failed to recognize that the investigation of the slander case was an inquiry unrelated to Ms. A’s complaint against him. The UNDT further failed to address why AAR needed to disclose his conflict of interest “if the SRSG and the [CDU] were already fully aware of [Ms. A’s] complaint against him ... but nevertheless chose to forward the inquiry to him for action as acting COS”. The UNDT also failed to consider that his proposal that an external investigator handle the investigation had been refused and that he had taken steps to recuse himself “de facto” by appointing another staff member, Mr. F. AAR also claims that it is “unclear” how his role in the slander case investigation was “interference”, claiming that evidence was “ignored”, a relevant witness was not interviewed, and there was no “preponderance of the evidence” of his “interference”. Finally, AAR claims that the UNDT “took no note” that Ms. A’s other allegations that he had engaged in retaliation had been rejected and that the contested decision “violated the presumption of regularity in all administrative decision making”.

The Secretary -General's Answer

32. The Secretary-General submits that AAR has failed to establish any error by the UNDT in its scope of review.

37. The Secretary-General contends that the UNDT correctly found that the contested decision was proportionate to AAR's misconduct. The UNDT made its finding after considering the applicable legal framework, its prior findings with respect to the nature of AAR's misconduct, and AAR's submissions. Indeed, the UNDT correctly found that reprimands "are important for upholding standards of proper conduct and promoting accountability", and that the contested decision was issued following a disciplinary process against the Appellant. Accordingly, it fell within the Administration's discretion and was entirely reasonable. AAR's complaint that he is obligated to disclose in job applications that he has been issued a reprimand is inapposite and does not render the contested decision disproportionate. In view of the foregoing, the UNDT correctly found that the contested decision was proportionate to AAR's misconduct.

38. AAR is not entitled to the relief requested. There is no legal basis upon which to grant either rescission or compensation as the contested decision was lawful, and AAR has failed to demonstrate otherwise. Accordingly, in the absence of any illegality, his requests should be rejected. Second, there is no merit to AAR's request for additional compensation. AAR has not presented any evidence that the purported lack of a response to his job applications is due to the disclosure or that it otherwise has had a "chilling effect" on AAR's job prospects. Also, none of the medical reports refer to these concerns. AAR is therefore not entitled to the relief requested.

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2024-UNAT-1441

THE UNITED NATIONS APPEALS TRIBUNAL

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2024-UNAT-1441

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2024-

THE UNITED NATIONS APPEALS TRIBUNAL

reprimands “are important for upholding standards of proper conduct and promoting accountability”. The Secretary-General further argued that the contested decision was issued following a disciplinary process against the Appellant and was entirely reasonable.

61. The Appeals Tribunal has held that:²⁶

Although the reprimand is not a disciplinary measure but an administrative one, because of its adverse impact on the concerned staff member’s career, it must be warranted on the basis of reliable facts, established to the requisite standard of proof, namely that of ‘prepar 9 (mbT10.2 (2 Tw 0 (si)-d)-2.3-8

efficiency and performance management in the interests of the Organization as contemplated by Staff Rule 10.2(b).

64. It is a fact that despite being an administrative measure as opposed to a disciplinary one, the im3ioc8f Tc 0 Tw 0.935 0Td ()Tj -0.00 0 Td [(i)0(a0.00 0 ()Tj -0.006 Tc 8.006 Tw 8.554 0 Td [(i)0.5w1 (

69. The Secretary-General contends that the Dispute Tribunal erred, when it held that in paragraph 74 of the impugned Judgment that almost two and a half years to decide the matter was unjustified and warranted compensation in light of the undue delay in completing the disciplinary process. According to the Secretary-General, the conclusion of UNDT in the impugned Judgment contradicts its prior finding that AAR's due process rights had been respected the Dispute Tribunal however, failed to explain how these two findings were consistent.

70. We have consistently held that there can be no compensation without an illegality. In *ADD* citing *Kebede*, we opined that “[i]n order to award compensation for harm, there must be evidence to support the existence of harm, an illegality, and a nexus between the two.³¹ This universally accepted principle was firmly established by us in *Kebede* and a multitude of cases.

71. But according to the Appeals Tribunal's consistent case law, for a delay to warrant compensation, “the staff member's due process rights must have been violated by the delay and the staff member must have been harmed or prejudiced by the violation of his or her due process rights”.³²

72. We acknowledge and approve the established principles on non-pecuniary damages or moral damages laid down by our jurisprudence and consistent with the legislative intent found in the amendment of Article 10(5)(b) of the UNDT Statute by General Assembly Resolution 69/203 of 18 December 2014 which sought to ensure that compensation may only be ordered for harm and that the existence of such harm must be proven and supported by appropriate evidence. In *Kallon*, the full bench of UNAT held that “a proper evidentiary basis must be laid supporting the existence of moral harm before it is compensated”.³³ This principle is at the heart of the amendment of Article 10(5) (b) of the UNDT Statute

THE UNITED NATIONS A

77. While we agree that any award for moral damages for established illegality must be compensatory, the delay of three years and nine months from complaint to resolution was unconscionable even if allowing for an appropriate period when informal resolution was explored. This was not a complex investigation of a substantial number of charges. The reasonably expected duration of such proceedings was well and truly exceeded in the instant case. A process that began with a complaint in late 2016 but was not concluded until mid -2021 must be marked by an award of compensation for the adversely affected staff member.

78. For that reason, the Dispute Tribunal did not err in awarding compensation for moral damages in the absence of any illegality.

79. In the instant case, we agree with the Dispute Tribunal that a delay of three years and nine months in investigating AAR's alleged misconduct tacitly violated his inherent worth and dignity. ~~UNAT/2024/1441~~

Judgment

81. ~~Trifunovic v. Wainwright~~