
APPEALS TRIBUNAL
'APPEL DES NATIONS UNIES

Febremariam
(Appellant)

v.

General of the United Nations
(Respondent)

JUDGMENT

Self-represented

Amy Wood

THE UNITED N

[...] behavior of gross insubordination and disrespect to constituted authority amounts to misconduct for which you are hereby issued this letter of reprimand in line with Staff Rules [sic] 10.2 (b)(i). The Chief, [Human Resources Services Section (HRSS)] is hereby advised to keep a copy of this letter of reprimand in your

Submissions

Mr. Gebremariam's Appeal

5. The Appellant appeals to this Tribunal to review whether the UNDT Judgment was correctly and legally issued, or was affected by one of the errors set out in Article 2(1)(a) of the Appeals Tribunal Statute. The Appellant alleges that the UNDT erred in issuing its Judgment before the Secretary-General had filed his response to a UNDT order requesting information on alternative remedies.

6. The Appellant otherwise makes submissions relating to the classification of his post, the allegedly illegal withholding of his within-grade increments, violations by the Office of Staff Legal Assistance in declining to represent him before the UNDT and the alleged harassment and abuse of authority, as well as retaliation, by the Director of DAS.

7. The Appellant requests that this Tribunal: order compensation in the amount of three months' net base salary for moral injury caused by the wrongful issuance of the reprimand, and four months' net base salary for the MEU's failure to "follow[...] their own procedure"; reconsider all the economic loss he had suffered since 1990 as a result of the allegedly illegal withholding of his within-grade increments; order costs associated with the fear, pain and future expectation for career development; and order his reassignment to the United Nations Logistics Base in Italy for training and work.

The Secretary-General's Answer

8. The Dispute Tribunal correctly dismissed the Appellant's application after having found that he had failed to adduce any evidence to demonstrate harm he had suffered that could be linked to the rescinded reprimand. The UNDT's findings were supported by the evidence and its conclusions were taken in accordance with the applicable jurisprudence of the Appeals Tribunal.

9. The Appellant has not established any error by the UNDT warranting a reversal of the Judgment. In any event, as the Appellant's claims on appeal concerning the merits of the decision to issue the letter of reprimand were rendered inconsequential by the withdrawal of the reprimand, they should not be subject to further judicial review.

10. The Appellant's remaining claims on appeal were not properly before the UNDT for

Mr. Gebremariam cannot be said to be unaware of the filing process. In the circumstances, the additional evidence he purported to submit by e-mail has not been admitted to the case file.

Merits of the appeal

15. In his appeal Mr. Gebremariam requests this Tribunal to review the UNDT Judgment and determine whether it was lawful. He failed to put forth any arguments as to how the UNDT erred or to identify the grounds for his appeal under Article 2(1) of the Appeals Tribunal Statute, although he bears the burden of satisfying the Appeals Tribunal that the Judgment rendered by the Dispute Tribunal is defective.² Our review has nonetheless discerned an error of law.

16. Before the UNDT, Mr. Gebremariam contested the Director's decision of 6 February 2013 to issue him with a written reprimand. By way of remedy, he requested that the UNDT order rescission of the written reprimand and that it be expunged from his official status file, and payment of the sum of three months' net base salary as compensation for moral injury.

17. Noting that the remedy initially sought by Mr. Gebremariam in his UNDT application, namely rescission of the reprimand, had already been effected, the UNDT found that the only legal issue arising for determination in this case was whether Mr. Gebremariam was entitled to compensation for moral damages as a result of the issuance of the reprimand. In this regard, we consider the UNDT erred.

18. Pursuant to Article 2(1)(a) of the UNDT Statute, the Dispute Tribunal shall be competent to hear and pass judgment on an application challenging an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. Our jurisprudence has long held that an appealable administrative decision is one that has a direct impact and produces direct legal consequences on a staff member affecting his or her terms of appointment or contract of employment.³

² *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-547, para. 30, citing *Al-Moued v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East* Judgment No. 2014-UNAT-458, paras. 18 and 23, and *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051; *Balinge v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-377, paras. 16-17; *Charles v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-284, para. 26.

³ *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557, para. 28, citing *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, former Administrative Tribunal Judgment No. 1157, *Andronov* (2003), para. V, and *Andati-Amwayi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-058, para. 17; *Nguyen-Kropp* and

19. The Appeals Tribunal is of the view that since the Administration had rescinded the impugned decision even before Mr. Gebremariam had filed his UNDT application, and by corollary should then have removed the written reprimand and all reference to it from Mr. Gebremariam's Official Status File, as rescission implies, it thereby rendered the claim before the Dispute Tribunal moot.⁴ There was thus no administrative decision on which the UNDT was competent to pass judgment in terms of Articles 2 and 8 of the UNDT Statute.⁵

20. The UNDT, having accepted that the reprimand had already been rescinded, consequently ought to have ruled that the application was not receivable as there was no contestable administrative decision for it to review. The UNDT thus exceeded its jurisdiction in accepting the application and considering whether compensation was payable.

21. In view of the foregoing, Mr. Gebremariam's appeal, which we nonetheless note argues

Original and Authoritative Version: English

Dated this 30th day of October 2015 in New York, United States.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Faherty

(Signed)

Judge Simón

Entered in the Register on this 18th day of December 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar