



JUDGE KAMALJIT SINGH GAREWAL, Presiding.

Synopsis

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal by Mr. Edgardo Buscaglia against Judgment No. UNDT/2010/112 issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 24 June 2010 in the case of *Buscaglia v. Secretary-General of the United Nations*.

2. Mr. Buscaglia served with the United Nations Office on Drugs and Crime (UNODC) from 6 May 2001 until 16 November 2003 when he announced that he would not be willing to continue working for UNODC upon the expiry of his contract on 30 November 2003. During his service with UNODC, Mr. Buscaglia informed the Office of Internal Oversight Services (OIOS) of two instances of wrongdoing in UNODC. OIOS conducted a thorough investigation and did not identify any misconduct. Upon releasing the OIOS report on 26 November 2003, the Executive Director of UNODC (Executive Director) issued a press release in which he stated that the two staff members, Mr. Buscaglia and another, “who [had] raised these unfounded allegations cannot have a future in the Organization”.

3. We hold that Mr. Buscaglia’s contract was scheduled to end on 30 November 2003 due to a lack of funding and not as a result of

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6. On 24 September 2003, Mr. Buscaglia identified himself as a witness in an ongoing investigation conducted by OIOS into acts of alleged corruption and mismanagement by UNODC staff members.

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opinion”. Mr. Buscaglia also submits that the UNDT erred by not offering an “explanation, justification or substantiation for its summary conclusions”. Mr. Buscaglia contends that the statement was contrary to Staff Rule 101.2(f) and constituted a disciplinary measure that had consequences on his terms of appointment.

16. Mr. Buscaglia requests that the Appe75 4at 453.6 -0.0o4at T0 0 SCN0v 0.0cE61 Tw 0 -1unat T0 3.6

February of 2003 a team of internal investigators requested [Mr. Buscaglia's] informal testimony (after OIOS was tipped by an anonymous whistleblower)". Finally, Mr. Buscaglia stated that the two events "represent an unconscionable state of affairs that hampers your capacity to improve UNODC's institutional performance and fund raising abilities..." and "[o]nly the explicit, strong, and recognized attempt to eradicate these types of practices...will avoid a possible deterioration of the image of our institution."

25. Nevertheless, Mr. Buscaglia and the other staff member did not wait for the results of the OIOS report prior to tendering their resignations. Mr. Buscaglia announced on 16 November 2003 that he would not remain with UNODC beyond the expiry of his current term while the other staff member, whose term did not end until 31 December 2003, resigned on 29 October 2003. Under these circumstances, the question of retaliation does not arise as the staff members had voluntarily resigned prior to the 26 November 2003 release of the OIOS report and the ensuing statement by the Executive Director.

26. Although Mr. Buscaglia's term may have been extended if fresh funding of USD 11 million for a new project had been confirmed, the question of whether or not he would be extended is unrelated to his status as a complainant/whistleblower in the OIOS investigation. Following his voluntary resignation of 16 November 2003, Mr. Buscaglia was separated from service on 30 November 2003.

27. The OIOS report was released on 26 November 2003. The report found that there was no abuse of travel entitlements. With regard to the award of the editing contract to the wife of the Chief of Operations, the OIOS report noted that this was done without the Chief of Operation's participation or supervision, and cleared him of the allegation of wrongdoing. However, the report did note that there was a conflict of interest and recommended that appropriate action be taken against the Chief of Operations. More importantly, the OIOS report found that "there [was] no evidence of retaliation against [Mr. Buscaglia]" and that the funding for a project that could have resulted in the terms of their employment being extended "ha[d] not been confirmed. Indeed, there is little documentation for this project".

28. On 26 November 2003, the UNODC press release was published and stated that "[h]aving carefully examined the OIOS' findings, which clear UNODC of corruption, the

29. We have gone through the record of the case, examined the grounds of appeal, the Respondent's Answer, and hold that the UNDT was correct in finding that the above statement dated 26 November 2003 was neither a decision to terminate Mr. Buscaglia's appointment nor a disciplinary measure. Instead, this statement was merely a publicly stated opinion which had no legal consequences on Mr. Buscaglia who, in addition to having already been informed on 29 October 2003 that his contract would not be renewed beyond 30 November 2003, had also declared "that he would not be able or willing to continue working for UNODC after his contract expired".

Judgment

30. The appeal is dismissed. The UNDT Judgment is affirmed.

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