UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2022-UNAT-1226

Rafia Rehman

(Respondent/Applicant)

Counsel for Ms. Rehman: Self-represented

Counsel for Secretary-General: Maryam Kamali

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. Ms. Rafia Rehman, a former staff member of the United Nations Children's Fund (UNICEF), Pakistan Country Office (PCO), contested before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) a decision of the Office of Internal Audit and Investigations (OIAI), taken as part of a preliminary assessment, that her complaints of harassment, discrimination and abuse of authority were unfounded and to refer them to an investigation. These decisions were rescinded and remanded to OIAI by the UNDT in Judgment No. UNDT/2018/039/Corr.1 dated 15 March 2018.[1]

2. By letter, dated 13 August 2018, Ms. Rehman was informed that her allegations had either not been substantiated or did not amount to misconduct and that the assessment of her complaints had been closed. Ms. Rehman then proceeded to file an application before the UNDT challenging these decisions and the UNDT disposed of that application by Judgment No. UNDT/2021/023 on 12 March 2021. The UNDT "once more" remanded the complaints "for a proper investigation" and directed the Administration to provide Ms. Rehman with a copy of her interview transcript and the summary (if any) that was utilized in their prior investigation.

3. The Secretary-General has appealed Judgment No. UNDT/2021/023. For the reasons gi6 (rd3 ((i)-2.7 (n)5.7 ( )]TJ 4 2)e2.7 (ga)0 o)-9.6 ((o)-2.6)5.8 (p)- Tc 00.7 .1 (he)4.5 (ir)2gr0 oobAtn

her contract was unlawful, rescinded the decision and awarded her in lieu compensation in the amount of one-year net base salary and moral damages of USD 5,000. [2]

5. On 26 January 2016, Ms. Rehman filed a complaint with OIAI, UNICEF, against her former supervisor, the Chief of the Education Section (CES) at UNICEF, PCO, Islamabad, in terms of CF/EXD/2012-007, UNICEF's Executive Directive on Prohibition of discrimination, harassment, sexual harassment and abuse of authority. In her complaint, Ms. Rehman listed various incidents of alleged ill treatment, discrimination, harassment, humiliation and abuse

complaint and the name of the complainant. The alleged offender will be invited to respond and will be given fifteen (15) calendar days to provide awritten response. Unless the Director, OIAI concludes on the basis of the complaint, the responseof the alleged offender, and the material submitted by both parties that the complaint is unfounded, OIAI will proceed to investi05 Td [a0 0 nsl05 Td (ai)-8.7 (e)(e)-9.8 (0 51.23 Tw (S208 0 Td 9( )Tj 0.0.012 Tc55223 Tw 0.e (e)90.9 (b)-

authority…The COI and the Investigation Specialist who previously handled the Applicant's complaints shall be recused from dealing with the remanded complaints[.]"[3]

11. Following the remand, OIAI decided to outsource the process of investigating Ms. Rehman's complaints to a private firm in the U.K., Moore Stephens. From 25 May 2018 to 8 August 2018, Moore Stephens conducted an assessment of Ms. Rehman's claims. It interviewed a number of witnesses and reviewed relevant documentary evidence.

12. Moore Stephens interviewed [illegible]

15. Ms. Rehman replied the same day, stating that she would respond. On 30 July 2018, Moore Stephens sent Ms. Rehmana reminder about the interview record. On 1 August 2018, Ms. Rehman replied, stating again that she would respond. Having not heard back from Ms. Rehman, on 8 August 2018, Moore Stephens issued two reports addressing Ms. Rehman's allegations of harassment. The reports concluded that there was no evidence of abuse of authority or misconduct.

16. By letter, dated 13 Augua524Tw -2 (ugu)3an

on the rules governing complaints of harassment and abuse of authority". [4] The application was somewhat ambiguous and unclear in relation to the relief she sought. On 1 February 2021, the UNDT issued OrderNo. 12 (GVA/2021) directing the parties to attend a case management discussion with the purpose, amongst other things, to identify the factual and legal issues to be determined. On 10 February 2021, the UNDT issued Order No. 34 (GVA/2021). Paragraph 7 of that Order defined the two issues for determination to be:

> a. Has the [Secretary-General] complied with UNDT/2018/039, which ordered that a thorough, proper, comprehensive and reasoned investigation be conducted into [Ms. Rehman's] allegations?
>
> b. Whether [Ms. Rehman] is entitled to the disclosure she seeks of the investigation reports that were issued subsequent to that Judgment.

20. It is important to note that this formulation narrowly defined the dispute to a

their prior investigation. The UNDT did not order disclosure of the Moore Stephens investigation report.

27. The Secretary-General filed his appeal against the Judgment of the UNDT on 11 May 2021, and Ms. Rehman filed her answer on 6 July 2021.

Submissions

The Secretary-General's Appeal

28. The Secretary-General submits that the UNDT erred in remanding Ms. Rehman's complaints to the UNICEF Administration once more "for a proper investigation in compliance with the regulatory framework".

29. The Secretary-General maintains that the UNDT erred in law in utilizing the incorrect provision of the legal framework; committed several errors of fact and erred in concluding that UNICEF had not provided a reasoned decision. Following the remand OIAI proceeded with a full investigation into Ms. Rehman's complaints. Therefore, the applicable provisions of CF/EXD/2012-007 in this case were Sections 5.18-5.22 governing investigations and not the provisions governing preliminary assessments – Sections 5.13-5.16.

30. The Secretary-

40. In ,[5] this Tribunal stated:

> [A]n administrative decision, which adversely impacts on a staff member's status, must be reasoned in order for the Tribunals to have the ability to perform their judicial duty to review administrative decisions and to ensure protection of individuals, which otherwise would be compromised. In this respect, the harmful administrative decision

an investigation under Sections 5.18-5.22 of CF/EXD/2012-007. Ms. Rehman thereafter will be in a position to better assess the merits of the decision and to decide on the remedial action (if any) she may wish to pursue. The appeal thus must be upheld for the limited purpose of modifying the order of the UNDT 3.1 cp.1 (D (ion)2.8 (s)28 (s)28 w-3.1 .e U)5 (N)4.9 (B3 (w)-1.3 (

Judgment

44. The appeal is upheld to the limited extent necessary to modify the order of the UNDT. The order of the UNDT in Judgment No. UNDT/2021/023 is modified and substituted as follows:

a. The decision of 13 August 2018 is rescinded.

b. The Secretary-General is ordered to provide Ms. Rehman with a new written reasoned decision in terms of Section 5.16 of CF/EXD/2012-007 setting out full and proper reasons for the decision that her complaints are unfounded.

c. Ms. Rehman's request for compensation for moral harm is rejected.

Original and Authoritative Version: English

Dated this 18th day of March 2022.

Judge Murphy, Presiding
Cape Town, South Africa