



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2015/179

Judgment
No.: UNDT/2016/207

Date: 18 November 2016

Original: English

Before: Judge Goolam Meeran

Registry: Nairobi

Registrar: Abena Kwakye-Berko

AWE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:
Self-Represented

Counsel for the Respondent:
Nicole Wynn, ALS/OHRM
Steven Dietrich, ALS/OHRM

Introduction

1. The Applicant is a Resident Auditor in the Office of Internal Oversight

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him. At the same meeting, the COS indicated, in the presence of the CMS, that she intended to convince the SRSG to have the Applicant withdrawn from the Mission because he had been seriously compromised.

12. Minutes of this meeting were circulated to about 25 staff members, who comprised, among others members of the management team, section chiefs and administrative assistants.

13. The Minutes stated:

Issue of the Auditor's two week pre-planning mission to Baghdad was discussed and rationale for it questioned. It seems that making up for financial loss incurred due to the move to Kuwait features prominently in the decision to visit Baghdad. However, the mission is strongly backed by the Chief of the Auditing Unit. CMS has suggested rotating out the auditor because he has been seriously compromised.

14. On 3 March 2014, the Applicant complained of abuse of authority and harassment on the part of the UNAMI COS and the former UNAMI CMS, in accordance with section 5.11 of ST/SGB/2008/5. The complaint was addressed to the former Under-Secretary-General, Department of Field Support (USG/DFS) with a copy to the Assistant Secretary-General, Office of Human Resources Management (ASG/OHRM).

15. On 17 April 2014 the complaint was referred by the ASG/OHRM to the Special Representative of the Secretary-General (SRSG) for his consideration and further action.

16. On 15 June 2014, SRSG Mladenov decided to convene a FFP pursuant to section 5.14 of ST/SGB/2008/5.

17. On 22 June 2014, the Applicant was informed that there would be delay in the investigation of his complaint because of the deterioration of the political and security situation in Iraq.

18. On 6 August 2014, the FFP was established and provided with its terms of reference.

19. Between 14 September 2014 and 18 February 2015, the Panel interviewed 14 witnesses. This list included the Applicant and staff members who were present at the meeting as well as the COS and CMS.

20. On 11 November 2014, the Applicant wrote to the Panel to enquire into the status of the investigation and noted that he was yet to receive a copy of his statement. The Panel responded that their report was still pending, but sent him a copy of his statement; which the Applicant reviewed and returned.

21. The Applicant was reassigned to serve in the United Nations Multidimensional Integrated Stabilisation Mission in Central African Republic (MINUSCA). He started in MINUSCA on 20 November 2014.

22. On 17 December 2014, the Applicant wrote to SRSG Mladenov complaining about the delay in reviewing his complaint. The Applicant stressed that he had an interest in “getting (his) name cleared sooner rather than later because retention of the offending statements constituted a source of continued injury to (his) dignity, character, personal and professional reputation”. This complaint was copied to the ASG/OHRM and the then USG/DFS.

23. The Applicant did not receive a response from any of the recipients.

24. On 13 January 2015, the Applicant requested management evaluation of the Respondent’s violation of his due process rights and for prompt consideration of his complaint pursuant to ST/SGB/2008/5.

25. On 20 January 2015, the Management Evaluation Unit (MEU) informed the Applicant that they found his request for review to be not receivable.

26.

35. In February 2016, the USG/DPKO referred the findings against the CMS to the ASG/OHRM. The matter remains under “review” by OHRM as at the time of this Judgment.

36. On 26 October 2016, the Tribunal issued Order No. 464 (NBI/2016) requiring further particulars regarding OHRM’s review from the Respondent.

37. Specifically, in response to the FFP’s findings against the CMS, the Respondent submitted:

Upon review of the Applicant’s complaint and the record, the USG/DPKO referred the Applicant’s complaint to the ASG/OHRM for possible disciplinary action. OHRM is currently reviewing the matter, including providing the CMS

Judgment

43. The Application is dismissed.

(Signed)

Judge Goolam Meeran

Dated this 18th day of November 2016

Entered in the Register on this 18th day of November 2016

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi