



1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by the Secretary-General of the United Nations against Judgment No. UNDT/2012/049, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 26 April 2012 in the case of *Kasmani v. Secretary-General of the United Nations*. The Secretary-General appealed on 25 June 2012 and Mr. Mohammed Rizwan Kasmani answered on 6 September 2012.

Facts and Procedure

2. On 4 June 2009, Mr. Kasmani joined the United Nations Office in Nairobi (UNON) as a G-4 Procurement Assistant with the Procurement, Travel and Shipping Section (PTSS) on a three-month temporary appointment. His immediate supervisor, Officer-in-Charge of PTSS, subsequently recommended that Mr. Kasmani'

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takes the view that the framers had in mind only a breach of the contract of employment and therefore provided for compensation on that basis alone. However, in the process of a termination of a contract of employment, there are other considerations that come into play in addition to the strictly monetary compensation that results from the loss of employment.²

11. The UNDT ordered that “the Ethics Office remain seized of the matter and monitor the situation for further action should there arise allegations of violation of this Order”.³

Submissions

Secretary-General’s Appeal

12. The Secretary-General submits that the UNDT erred in law by concluding that the two-year cap on compensation in Article 10(5)(b) of the UNDT Statute applied only to compensation for economic damages. That interpretation is inconsistent with the clear jurisprudence of the Appeals Tribunal. Moreover, the UNDT failed to offer any explanation as to why the facts of the case created “exceptional circumstances” warranting compensation in excess of two years’ net base salary.

13. The Secretary-General also submits that the UNDT’s award of an additional nine months’ compensation for economic loss is not supported by the evidence of the case, and appears punitive in nature. Furthermore, the UNDT’s awards of compensation for breach of contract and violation of due process rights compensate the same breach and are thus duplicative.

14. The Secretary-General maintains that the UNDT’s award of a total of one year’s net base salary for economic damages is excessive. In this regard, the Secretary-General notes that Mr. Kasmani continued to be in the employ of UNON for nearly six months due to the illegal decision of the UNDT, from 3 November 2009 to 29 April 2010. The Secretary-General also notes that Mr. Kasmani was hired on a temporary appointment for only three months. Given that the Organization had paid him 12 months’ net base salary, any additional compensation is excessive.

15. The Secretary-General also maintains that the UNDT exceeded its competence and erred in law in awarding moral damages when Mr. Kasmani had not provided any evidence of such injury.

16. The Secretary-General further maintains that the UNDT exceeded its competence in ordering the Ethics Office to take actions beyond the scope of that office's mandate.

17. The Secretary-General requests that the Appeals Tribunal vacate the UNDT's orders for compensation and its order relating to the Ethics Office.

Mr. Kasmani's Answer

18. Mr. Kasmani submits that the UNDT did not err in awarding a total amount of compensation that exceeded two years' net base salary, given the exceptional circumstances and aggravating factors of the case. The findings of fact justify such an award.

19. Mr. Kasmani submits that the UNDT did not err in law or exceed its competence by awarding compensation for moral harm. The moral harm to him is largely self-evident. The wrongs committed against him were such that it would have been odd for the UNDT not to have found that he had suffered substantial moral injury. The UNDT was entitled to take note of those injuries when awarding damages.

20. Mr. Kasmani maintains that, contrary to the Secretary-General's assertion, the UNDT properly ordered the Ethics Office to monitor for signs of retaliation as a form of specific performance in line with Article 10(8) of the UNDT Statute and within the mandate of the Ethics Office.

21. Mr. Kasmani requests that the Appeals Tribunal uphold the UNDT Judgment in its entirety.

Considerations

22. This appeal only concerns the amount of compensation awarded by the UNDT and the justification for it.

23. The UNDT awarded Mr. Kasmani compensation in the amount of six months' net base salary for breach of contract/loss of employment, three months' net base salary for violation of his due process rights, USD 15,000 for harassment, and USD 5,000 for loss of reputation. This award exceeds the normal maximum compensation in the amount of two years' net base salary as, at the time, Mr. Kasmani's gross annual salary was approximately USD 15,183. In this instance, the award amounted to approximately 28 months' net base salary for Mr. Kasmani.

24. Article 10(5) of the UNDT Statute provides as follows:

As part of its judgement, the Dispute Tribunal may order one or both of the following:

(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph;

(b) Compensation, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation and shall provide the reasons for that decision.

25. The Secretary-General submits that the UNDT misinterpreted the parameters of the two-year cap on damages set forth in Article 10(5)(b) of the UNDT Statute. The Secretary-General challenges the UNDT's findings that the two-year cap on damages only governs a breach of a contract of employment and provides for compensation on that basis alone; that "in the process of a termination of a contract of employment, there are other considerations ... in addition to the strictly monetary compensation that results from the loss of employment";⁴ and that the Tribunal, "by virtue of its powers under Article 19 of the Rules of Procedure[,] ... may go over and above the strict monetary compensation provided for by the Statute".⁵

26. We agree with this submission as the two-year cap is not limited to awards for breach of contract but for other heads of damages that directly flow from the breach.

⁴ Judgment No. UNDT/2012/049, para. 120.

⁵ Judgment No. UNDT/2012/049, para. 121.

27. The Appeals Tribunal expressly held in *Mmata*

the facts of this case clearly showed that the treatment meted out to the Applicant strike most unfortunately at the core values, standards and issuances of the United Nations. Extraneous factors rarely manifest themselves as clearly as they have done in this case.

compensation that the Secretary-General already paid. The amount of compensation depends on the particular circumstances of each case and should be proportionate to the established harm. Accordingly, we reduce the amount of compensation to three months' net base salary, which he already received from the Secretary-General.

37. The Dispute Tribunal awarded Mr. Kasmani a further three months' net base salary for violation of due process. We find this amount to be duplicative of the compensation already made by the Secretary-General. We hereby set this aside.

38. From the foregoing Mr. Kasmani is only entitled to compensation () of net base salary for

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Dated this 28th day of March 2013 in New York, United States.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Simón

(Signed)

Judge Weinberg de Roca

Entered in the Register on the 24th day of May 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar