
Case No.: UNDT/NY/2009/127

Judgment No.: UNDT/2011/002

Date: 6 January 2011



1. The Applicant, Ms. Montebon, a former Procurement Associate with the United Nations Development Programme (“UNDP”) in the Philippines appealed the decision of the Respondent to impose a written censure and a loss of two steps in-grade.

2. By its Judgment No. UNDT/2010/176 of 8 October 2010, the Tribunal upheld Ms. Montebon’s complaint that the Respondent could not impose a disciplinary measure on the basis of evidence that was improperly obtained in breach of Ms. Montebon’s due process rights.

3. The Tribunal affirmed and applied the principle in the Judgment of the former UN Administrative Tribunal in para. XIV of Judgment No. 815, *Calin* (1997):

The Tribunal ... respects the Secretary-General’s authority to exercise his discretion in defining serious misconduct and in determining appropriate penalties. However, the Tribunal will affirm the Respondent’s exercise of discretionary authority only when satisfied that the underlying allegation of misconduct has been proven through a procedure that respects due process and that is not tainted by prejudice, arbitrariness, or other extraneous factors.

4. In upholding the important principle of due process, the Dispute Tribunal stated at para. 47:

It would be wrong in principle for the Tribunal to condone a breach of the right to due process on the basis that it made no difference in the end because there was sufficient evidence that the applicants had in fact committed the misconduct in question. Procedural propriety and the protection of fundamental rights is a central theme pervading not only the Charter of the United Nations, but various issuances of the Secretary-General and the General Assembly. Disciplinary findings and penalties imposed as a result or as a consequence of a breach of this fundamental principle cannot be regarded as fair. A breach of the right to due process is both procedurally and substantively unfair.

5. The Tribunal issued certain orders in preparation for a hearing on remedies and also gave the Parties the opportunity to discuss and agree the remedies to be afforded to Ms. Montebon.

6. The Tribunal wishes to record its approval of the Parties' efforts in reaching an agreement to settle this matter.

7. Mr. Yap, for the Applicant, and Mr. Nadelson, for the Respondent, have informed the Tribunal that agreement had been reached by the Parties to settle the question of remedy.

8. By submission dated 21 December 2010, Mr. Yap informed the Tribunal that there has been full compliance with the terms of the settlement agreement.

Conclusion

9. There being no further judicial action to be taken, the case is closed.

(Signed)

Judge Meeran

Dated this 6th day of January 2011

Entered in the Register on this 6th day of January 2011

(Signed)

Santiago Villalpando, Registrar, UNDT, New York