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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2019/046/  
R1  
Judgment No.: UNDT/2023/001  
Date: 11 January 2023  
Original: English

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**Before:** Judge Francis Belle  
**Registry:** Nairobi  
**Registrar:** Abena Kwakye-Berko

ULAR

v.

SECRE





with a clear explanation for not pursuing her sexual harassment complaint and denied the other remedies sought.

17. The Applicant appealed the Dispute Judgment and moved the United Nations Appeals Tribunal ( UNAT/Appeals Tribunal ) for an award in damages for mishandling her sexual harassment complaint as well as damages for harassment, unfair treatment and abuse of authority, and an immediate promotion

b. The Applicant filed medical reports which reflect that she had a medical condition in November 2019 while she worked in the Kinshasa office and that recommended that she was better off working in another office.

c. She made requests for removal from the Integrated Office to allow her time to heal but this was denied.

d. This matter was referred to mediation as a result of which she was transferred to Bunia. It was upon this transfer that she withdrew the claim for transfer to another station in her application on the merits. The mediated settlement was not sustained in the long term since her contract ended after a period of one year. She is no longer working for the Organization. Her position in Bunia was

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b. The two medical reports attached to the Applicant's 2020 motion state that the Applicant has a history of illness predating her 2017 complaint. They do not establish any causal link between the

25. The Applicant had also applied for an Administrative Assistant position on 27 November 2017. She failed to take a test which was required to complete the process of being short listed for possible selection. This application therefore failed and was dismissed.

26. On 22 August 2018, OIOS completed its investigation of the sexual harassment complaint and found that the complaint was substantiated. However, the United Nations Development Programme ( UNDP ) which was the Organization responsible for any further action on the complaint closed the case

27. To a large extent this action by the UNDP and the relatively slow pace of investigating the matter gave rise to a determination that the relevant agencies had abused their power.

28. Indeed, UNAT spoke to this issue in the following terms at paragraph 17 of the decision:

However as for the application challenging the handling of the sexual harassment complaint, the Dispute Tribunal noted the inordinate amount of time it took the Administration to respond to the Appellant. She first complained about the incident in July 2015

31. The Tribunal ordered the parties to file written submissions on the question whether moral damages should be awarded to the Applicant on 22 August 2022.

32. Both parties filed their respective submissions on the issue of an award of moral damages. The Respondent argued at paragraph 21 of his submission filed on 2 December 2022 that the Applicant has no claim for damages for general harassment allegations related to her performance evaluations and that the Dispute Tribunal found and the Appeals Tribunal affirmed were not receivable. Accordingly, [redacted] claim for the Tribunal to award damages for [redacted] treatment of the Applicant, failure to properly acknowledge [redacted] and [redacted] for mental anguish, trauma and [redacted]

33. The Respondent further submitted that the Applicant has not produced any evidence of moral harm caused by the delay in notifying her of the outcome of her complaint.

34. [redacted] finding that the Organi [redacted] s flawed. She also argued that the medical findings established that she was suffering from a medical condition because she did not like working at the post where she was sent. These facts [redacted] - [redacted] , establish that there was harassment and that she suffered moral harm as a result of the combination of factors including the delay in the investigation of her harassment allegation.

35. *Kebede*<sup>1</sup> sets out the three elements contributing to compensation for harm. This harm must be established by convincing medical evidence. Secondly there must be a legal breach committed by the administration and thirdly there must be a link between the damage caused and the breach committed by the administration.

36. It is accepted that no award was made consequent to the application that the delay in responding to the reports caused harm.

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<sup>1</sup> 2018-UNAT-874.



37.

claim for damages. The Tribunal agrees. The Tribunal is satisfied as is argued at paragraphs 3 and 4 of the submissions of the Respondent of 2 December 2022.

38. The Applicant has not produced any evidence of moral harm that was caused by the delay in notifying her of the outcome of her complaint.

39.

30 October 2020

motion state that the Applicant has a history of ill health predating her 2017

condition and th

-report of

issues in the workplace do not prove that her conditions were caused by the handling of her complaint. Neither of the reports reference the incident that was the subject of the Applica

omplaint or the handling of the complaint. The first report of 30 November 2019 of the Centre Hospitalier prepared only after the Applicant filed her application states that the Applicant had complained of lack of

hese symptoms are consistent with the

20 January 2020 diagnosis of the Applicant s medical condition the onset of which typically occu

the Applicant was 55 years old.

40. Also, ~~VHHS DQBEWfeDĐŽC~~

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