



JUDGE MARK P. PAINTER, Presiding.

Synopsis

1. Even after finding this case non-receivable, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) undertook a final review of the allegations of retaliation by Li-Wen Zhang (Zhang). The Dispute Tribunal found no evidence that her treatment was motivated by retaliation but was a predictable outcome of her temporary assignment. Zhang's claim that her medical evaluation by the Medical Services Division (MSD) was retaliatory and was done with intent to label her as disabled was not accepted. The Dispute Tribunal found that there was no satisfactory evidence that the impugned decisions were motivated by retaliation.

2. Thus Zhang's case, even if receivable, failed on the facts. This being an appellate court, we hold that the UNDT did not err in finding that the decisions contested in the application did not constitute administrative decisions and thus her application was not receivable. This appeal must be dismissed.

Facts and Procedure

3. Zhang joined the then Department of Conference Services of the United Nations (now the Department of General Assembly and Conference Management (DGACM)) in 1985. Zhang alleges that on 10 September 1997 the Secaepartmen2.338 0(e Sd(ca)4 N5.on)8(1(s thaBh)4(e S)cat

doubtful that the MSD evaluation constituted an administrative decision as the medical evaluation was voluntarily attended by Zhang and resulted in recommendations which she was entitled to waive in writing and she could have sought review of them through other avenues. Although many of the events which occurred after September 1997 could be classified as administrative decisions, the Dispute Tribunal found that Zhang was time-barred from challenging these decisions.

10. In the interests of justice, the Dispute Tribunal undertook a final review of Zhang's allegations. The Dispute Tribunal found that her return to DGACM in March 2009 was not motivated by retaliation but was a predictable outcome of Zhang's temporary assignment to DESA. Zhang's claim that the MSD's evaluation was retaliatory and was done with intent to label her as disabled was not accepted. The Dispute Tribunal found that there was no satisfactory evidence that the impugned decisions were motivated by retaliation. Further, the administrative actions taken since the assault on Zhang in September 1997 were not retaliatory.

11. After being granted a 20-day extension of the time limit to appeal, Zhang filed an appeal against the Dispute Tribunal's Judgment on 29 April 2010. The Secretary-General filed an answer to the appeal on 18 June 2010.

12. On 6 October 2010, Zhang filed a "Request to submit newly received but relevant information to the Appeals Tribunal" under Article 2(5) of the Statute of the Appeals Tribunal (Statute). The Secretary-General did not file a response to the request.

Submissions

Zhang's Appeal

13. Zhang submits that the Dispute Tribunal failed to exercise its jurisdiction. The Dispute Tribunal has "a duty to right a wrong" and there was sufficient evidence to find in favour of Zhang, in particular: (1) no formal investigation was carried out after Zhang reported the incident in September 1997; (2) there was immediate retaliation as she was removed from her G-7 post; (3) she was assigned to work in the "printing shop" after obtaining her MBA degree; and (4) the Dispute Tribunal failed to enquire why she was assigned the duties she was when she had Ph. D in social economics.

14. Zhang also submits that the Dispute Tribunal erred on a question of law by not addressing the jurisprudence regarding internal vacancies. The Dispute Tribunal made errors of fact by not taking into account: (1) the continuation of retaliation against Zhang; and (2) the failure by the Administration to investigate Zhang's allegations of sexual harassment and physical assault as required under the relevant Staff Regulations and Rules.

15. Zhang contends that she was unable to present newly discovered documents to the Dispute Tribunal after the hearing in January 2010. The documents establish that in

of DGACM or she be paid moral damages equivalent to a G-7 salary to the date of her retirement.

Secretary-General's Answer

19. The Secretary-General submits that Dispute Tribunal correctly concluded that the application was not receivable as Zhang did no

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment

27. For the foregoing reasons, the appeal is dismissed.

Dated this 29th day of October 2010 in New York, United States.

Original and authoritative version: English

(Signed)

Judge Painter, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Boyko

Entered in the Register on this 29th day of December 2010 in New York, United States.

(Signed)

Weicheng Lin, Registrar