



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Case No. 2010-118

Koda
(Appellant)

v.

Secretary-General of the United Nations
(Respondent)

JUDGMENT

Before:	Judge Mark P. Painter, Presiding Judge Sophia Adinyira Judge Inés Weinberg de Roca
Judgment No.:	2011-UNAT-130
Date:	8 July 2011
Registrar:	Weicheng Lin

Counsel for Appellant: Steven Powles

Counsel for Respondent: John Stompor

JUDGE MARK P. PAINTER , Presiding.

Synopsis

1. We hold that, in a case of alleged constructive termination, the actions of the employer must be such that a reasonable person would believe that the employer was “marching [them] to the door”.¹ The trial court applied the proper standard, and found no constructive termination. In fact, the Administration continued to extend the employee’s contract, even in the face of the negative reports.

2. The Office of Internal Oversight Services (OIOS) operates under the “authority” of the Secretary-General, but has “operational independence”² As to the issues of budget and oversight functions in general, the General Assembly, in its resolution 48/218B, calls for the Secretary-General’s involvement. We hold that, insofar as the contents and procedures of an individual report are concerned, the Secretary-General has no power to influence or interfere with OIOS. Thus the United Nations Dispute Tribunal (UNDT or

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9. By letter dated 10 May 2007, the USG/DPI informed Koda about the outcome of the DPI Panel's investigation, but did not make it available to her. Instead, the USG/DPI summarized that Panel's findings.

10. In August 2007, OIOS conducted an audit of UNIC Tokyo following Koda's earlier request for a full financial audit. On 24

issued Judgment No. UNDT/2009/024 on Production of Documents, ordering the

- (iv) Koda was “unreasonably” and “arbitrarily” refused permission to record her interview;
- (v) Some of the DPI Panel’s statements and questions recorded in the notes of the interviews indicated that particular members had “prejudged particular issues against Koda without yet having heard from her”;
- (vi) The Chair of the DPI Panel went sight-seeing with a principal complainant against Koda before submission of the report to the USG/DPI;
- (vii) The DPI Panel report failed to consider the staff allegations against the factual background of Koda’s exposure of financial irregularities;
- (viii) The USG/DPI’s response to the DPI Panel report to Koda was “judgmental, heavy-handed ... one-sided and unjust”;
- (ix) The USG/DPI failed to provide Koda with a copy of the DPI Panel report in circumstances where administrative action was taken on the basis of that report;
- (x) The confidentiality of the DPI Panel report was breached as a result of its provision to OIOS, which in turn disclosed the content of the DPI Panel’s report in its report, which entered into the public domain. Moreover, it was unfair for DPI to use the DPI Panel’s report for a purpose for which it was not directed, namely, the provision to OIOS to make factual conclusions.

21. Koda submits that, in finding that the OIOS audit report was inadequate, unfair and one-sided, the UNDT erred in holding that the failings of the audit process were not within its jurisdiction.

22. Koda submits that the UNDT failed to apply the appropriate legal test or to properly evaluate all of the evidence weighing upon Koda’s decision to resign.

23. Koda submits that the UNDT erred in holding that the USG/DPI was entitled to make the statements he made to the Japanese media at a press conference.

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overrule the finding of the UNDT judge, who, having heard and considered all aspects of the request, ruled: “Accordingly, although I am far from persuaded that the conclusions of the panel were correct or that the reasoning they adopted was convincing, I decline to quash the report of the investigation panel for formal shortcomings and am not prepared to conclude that its findings were not reasonably open.”⁷ We believe that this was a decision for the trial court, and we should not substitute our judgment at this juncture.

39. Did the UNDT, after finding that the OI OS audit report was inadequate, unfair, and one-sided, err in holding that the failings of the audit process were not within the jurisdiction of the UNDT? The UNDT found that

[s]o patent were the shortcomings of the audit report in respect of the administrative and management problems in UNIC Tokyo, that it should not have been presented. Of course, I do not know whether the conclusions were incorrect or the recommendation unjustified as such: what I do conclude, however, is that there is no process of investigation described or reasoning expressed that justifies any confidence in the propriety of the conclusion or utility of the recommendation. Such a document should never have been published.⁸

40. The Administration claims that OIOS’ decisions are not administrative decisions of the Secretary-General, and thus not subject to review by this, or necessarily any other, Court. But

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Judgment

45. We affirm the UNDT's Judgment.

Original and Authoritative Version: English

Dated this 8th day of July 2011 in Geneva, Switzerland.

(Signed)

Judge Painter, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Weinberg de Roca

Entered in the Register on this 29th day of August 2011 in New York, United States.

(Signed)

Weicheng Lin, Registrar