



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2013-UNAT-311

Pirnea
(Respondent/Applicant)

v.

Secretary-General of the United Nations
(Appellant/Respondent)

JUDGMENT

Before: Judge Rosalyn Chapman, Presiding
Judge Luis María Simón
Judge Inés Weinberg de Roca

Case No.: 2012-347

Date: 28 March 2013

Registrar: Weicheng Lin

Counsel for Respondent/Applicant: Gavin Irwin

Counsel for Appellant/Respondent: Wambui Mwangi

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal of Judgment No. UNDT/2012/068, issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 10 May 2012 in the case of *Pirnea v. Secretary-General of the United Nations*. The Secretary-General filed his appeal on 13 July 2012, and Mr. Vasile Pirnea answered on 14 September 2012.

Facts and Procedure

2. On 26 February 2007, Mr. Pirnea joined the United Nations Department of Safety and Security (DSS) as a member of the United Nations Security Council (UNSC) Secretariat. He was assigned to the United Nations Security Council (UNSC) Secretariat, where he worked as a member of the United Nations Security Council (UNSC) Secretariat. He was assigned to the United Nations Security Council (UNSC) Secretariat, where he worked as a member of the United Nations Security Council (UNSC) Secretariat.

endangering his life, continue to be posted in Somalia -- even outside Hargeisa. As a consequence, DSS had only 10 FSCOs operating in Somalia, rather than the authorized number of 11, which made it difficult for DSS to fulfill its mandate to protect Organization personnel in Somalia.

6. DSS referred the allegations by the Somali woman to the OAI to investigate. The OAI determined a formal investigation could not be opened since the culture in Somalia, among other things, made it impossible to interview the complainant. The OAI case was closed on 23 October 2010.

7. On 5 October 2010, the Senior Human Resources Officer with DSS (SHRO/DSS) advised Mr. Pirnea that DSS “ha[d] decided not to extend [his] fixed-term appointment when it expire[d] at the end of this month” and a more formal notification would follow shortly. On 13 October 2010, Mr. Pirnea sent a letter to the Under-Secretary-General, DSS, explaining that his appointment would not expire until the end of February 2011, and requesting his assistance. On 26 October 2010, the SHRO/DSS notified Mr. Pirnea that he had received a copy of the letter to the Under-Secretary-General and was reexamining Mr. Pirnea’s contractual status. The SHRO/DSS asked Mr. Pirnea whether he would agree to an extension of his contract until 26 February 2011, and advised him that this would mean his duty station would be officially changed to Nairobi. Mr. Pirnea agreed to the extension of his contract and the change of duty station.

8. On 27 October 2010, the SHRO/DSS advised Mr. Pirnea, who had made an inquiry

17. On 1 March 2012, the UNDT held an oral hearing at which Mr. Pirnea testified on his own behalf.

18. On 10 May 2012, the UNDT issued Judgment No. UNDT/2012/068, which concluded: (1) there was no valid reason for not renewing Mr. Pirnea's contract; (2) there was bias within the Administration against Mr. Pirnea that contributed to the non-renewal decision; (3) the decision to transfer Mr. Pirnea from Côte d'Ivoire to Somalia was motivated by unproven allegations; and (4) Mr. Pirnea's claim for DSA was receivable since his request for management evaluation of the non-renewal encompassed "entitlements", including DSA. The UNDT then awarded Mr. Pirnea: (1) "two years' net base salary for the non-renewal of his contract and for the treatment meted out to him following the allegations of racist behaviour" in Côte d'Ivoire; and (2) "DSA entitlements for the period [he] was posted in Nairobi, Kenya when his duty station was in Hargeisa, Somalia". Additionally, the UNDT referred the conduct of the Côte d'Ivoire CSA to the Secretary-General, pursuant to Article 10(8) of the UNDT Statute.

Submissions

Secretary-General's Appeal

19. The UNDT erred on a question of law and fact by concluding Mr. Pirnea was not provided with a valid reason

21. The UNDT exceeded its jurisdiction or competence when it considered matters not included in Mr. Pirnea's request for management evaluation in determining the legality of the decision not to renew his appointment. In particular, the UNDT erred in considering and determining the 2009 allegations of racist and improper behavior tainted the decision not to renew Mr. Pirnea's contract. Since there was no evidence that the 2009 allegations or the CSA played any role in the non-renewal decision, the UNDT effectively shifted the burden to the Administration to show the non-renewal decision was not motivated by bias. Rather, it is the staff member's burden to show bias or improper motivation.

22. The UNDT exceeded its competence and erred on a question of law and of fact by concluding that Mr. Pirnea's claim for DSA was receivable. It was not receivable because his request for management evaluation did not refer to DSA, and DSA is not an "entitlement".

23. The UNDT erred in law in finding that Mr. Pirnea was entitled to DSA for the period from 24 July 2010 until his separation from service. This ruling is contrary to the UNDP Special Operations Approach Guidelines.

24. The UNDT exceeded its competence and erred on a question of law in awarding

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THE UNITED NATIONS APPEALS TRIBUNAL

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Thus, this Tribunal finds that the UNDT erred on a question of law and fact resulting in a manifestly unreasonable decision when it concluded there was no valid reason for the

... Although [Mr. Pirnea] did not specifically make a request for [DSA] in the request for management evaluation, [he] did in fact state in paragraph 25 of that request that a break-in-service would affect [his] right to certain entitlements that accrue with continuous service, including but not limited to the right to home leave.

... A proper reading of the request for the management evaluation indicates that [Mr. Pirnea] refers specifically to entitlements. Though *the word DSA is not used*, the Tribunal considers that legitimately the entitlements to which [Mr. Pirnea] claims were due to him also encompass the DSA entitlements

42. Mr. Pirnea did not refer to DSA in his request for management evaluation, as the UNDT acknowledged. Any fair and objective reading of paragraph 25 of Mr. Pirnea's request for management evaluation shows that his use of the word "entitlements" was not intended to encompass DSA, which was the topic of separate correspondence between him and the SHRO/DSS. Management evaluation is to afford the Administration the opportunity to correct any errors in an administrative decision so that judicial review of the administrative decision is not necessary. Clearly identifying the administrative decision the staff member disagrees with is essential for this goal to be met. Because Mr. Pirnea's request for management evaluation focused solely on the decision not to renew his appointment, and did not identify the denial of his claim for DSA, the MEU could not and did not address it. In concluding that Mr. Pirnea sought management evaluation of his DSA claim, the UNDT erred in law and fact resulting in a manifestly unreasonable decision. The UNDT also exceeded its jurisdiction or competence in receiving the DSA claim and reaching its merits.

Improper Referral to the Secretary-General

43. The UNDT erred in law and fact when it referred the conduct of the Côte d'Ivoire CSA to the Secretary-General under Article 10(8) of the UNDT Statute, which provides that the UNDT "may refer appropriate cases to the Secretary-General ... for possible action to enforce accountability". In the present case, Mr. Pirnea's reassignment from Côte d'Ivoire was never appealed by him and was not before the UNDT. And there was no evidence showing that the Côte d'Ivoire CSA had any role in the OAI's failure to give timely written notice to Mr. Pirnea (and others) of the closure of its investigation into the 2009 allegations.

Judgment

44. The appeal is affirmed and UNDT Judgment No. UNDT/2012/068 is vacated.

Original and Authoritative Version: English

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

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Simón

(Signed)

Judge Weinberg de Roca

Entered in the Register on this 24th day of May 2013 in New York.

(Signed)

Weicheng Lin, Registrar