



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2014-UNAT-444

Hunt-Matthes

(Respondent/Applicant)

v.

Secretary-General of the United Nations

(Appellant/Respondent)

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Counsel for Ms. Hunt-Matthes: Miles Hastie/OSLA

Counsel for Secretary-General: Stéphanie Cartier/John Stompor

... On 25 August 2004, the Head of the Investigation Unit informed the Personnel Administration Section that the IGO had not recommended the extension of [Ms. Hunt-Matthes]' contract as a result of her unsatisfactory performance appraisal.

... On 26 August 2004, [Ms. Hunt-Matthes] received a copy of her Performance Appraisal Report ("PAR") for the period 1 September 2003 to 30 August 2004, which included the mid-term assessment dated 12 April 2004. Her performance was rated as "unsatisfactory".

... By a memorandum dated 27 August 2004, the Personnel Administration Section informed [Ms. Hunt-Matthes] that while her fixed-term appointment was due to expire effective 1 September 2004, her appointment was being extended as an administrative measure for the duration of her certified sick leave [until 30 September 2004].

...

... From 1 October 2004 until 30 August 2005 [Ms. Hunt-Matthes] was on 50 per cent sick leave. On 4 October 2004 [Ms. Hunt-Matthes] reported to work but was assigned to the Evaluation & Policy Analysis Unit ("EPAU"), UNHCR, as a Senior Evaluation Officer at the P-4 level where she served on several consecutive short-term appointments until she was separated from service on 31 May 2006.

... On 1 January 2005, [Ms. Hunt-Matthes] submitted a rebuttal statement contesting her PAR for the period 1 September 2003 to 30 August 2004. On 27 May 2005, the Rebuttal Panel issued a report in which it concluded that the case was outside its purview due to the allegations of misconduct involving senior staff of the IGO of the Executive Office. Instead, it recommended that the matter be referred to the Office of Internal Oversight Services ("OIOS") for action. This recommendation was not acted on.

...

... On 3 December 2005, [Ms. Hunt-Matthes] filed a formal complaint with OIOS alleging harassment and abuse of authority against her former supervisors at the IGO. OIOS did not investigate the matter.

... On 22 March 2006, [Ms. Hunt-Matthes] wrote to OIOS seeking protection against retaliation under ST/S GB/2005/21 [entitled "Protection against retaliation for reporting misconduct and cooperating with duly authorized audits or investigations"] pending the outcome of her 3 December 2005 complaint. On 7 April 2006, [she] wrote to the Ethics Office requesting protection from retaliation. She alleged that the negative PAR and the decision not to renew her contract pending the outcome of due process constituted retaliation.

... On 19 October 2006, the Interim Director of the Ethics Office informed [Ms. Hunt-Matthes] that the supporting evidence she had provided was insufficient for the Ethics Office to make a determination as to whether there was a credible case of retaliation. She was assured, however, that if she provided the requested material, the review would be undertaken expeditiously.

... Following several email exchanges and a meeting with the Ethics Office, [Ms. Hunt-Matthes] sent supporting documentation on 4 December 2006. By a memorandum dated 18 December 2006, the ... Ethics Office informed [Ms. Hunt-Matthes] of its conclusion that “[...] there is no connection between [her] reporting of misconduct and the decision not to renew her contract. The Ethics Office does not therefore find a prima facie case of retaliation.”

5. On 28 May 2013, the Dispute Tribunal issued Judgment on the Merits No. UNDT/2013/085, in which it found, *inter alia*, that Ms. Hunt-Matthes had a right to be protected from retaliation, the Ethics Office applied the wrong criteria in considering whether she had engaged in protected activities, the Ethics Office failed to identify that the retaliatory acts alleged were the unsatisfactory performance report and subsequent non-renewal of her appointment, and the Ethics Office failed to make a proper inquiry into the link between the protected activity and the alleged retaliation. The UNDT awarded Ms. Hunt-Matthes moral damages in the amount of USD 8,000, based on her stress and anxiety caused by the Ethics Office's breach of its duty to her.

Submissions

The Secretary-General's Appeal

The Appeal of the Judgment on Receivability

6. The Secretary-General's separate appeal of the Judgment on Receivability should be received by the Appeals Tribunal.

7. The UNDT erred in finding that Ms. Hunt -Matthes' application was receivable *ratione materiae*. The Ethics Office's determination that there was no *prima facie* case of retaliation is not an administrative decision taken by the Administration. Rather, the Ethics Office merely makes recommendations that may result in administrative decisions; it does not make administrative decisions. The Secretary-General has no authority over the determinations of the Ethics Office and its acts or omissions cannot be attributed to the Organization. Moreover, the Administration has never agreed that the Ethics Office's determination is an administrative decision taken by the Administration.

The Appeal of the Judgment on the Merits

8. The Ethics Office has authority to apply ST/SGB/2005/21 and not any other administrative issuances, as the UNDT erroneously held. The pre-existing mechanisms for protection from retaliation were not eliminated as a result of the establishment of the Ethics Office, and are not within the purview of the Ethics Office. The UNDT erred in finding that the complaints made by Ms. Hunt-Matthes constituted protected activity and that Ms. Hunt-Matthes had engaged in protected activities under ST/SGB/2005/21.

