



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2015-UNAT-505

**Benfield-Laporte
(Appellant/Respondent)**

v.

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

JUDGMENT



JUDGE INÉS WEINBERG DE ROCA, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it two appeals against Judgment No. UNDT/2013/162, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Geneva on 5 December 2013 in the case of *Benfield-Laporte v. Secretary-General of the United Nations* (Impugned Judgment). On 3 February 2014, Ms. Gillian Benfield-Laporte filed an appeal with the Appeals Tribunal against the Impugned Judgment (Case No. UNAT-2014-575). On 4 February 2014, the Secretary-General filed his appeal (Case No. UNAT-2

16. On 17 June 2013, Ms. Benfield-Laporte submitted an application to the Dispute Tribunal contesting the decision to refuse to conduct a formal fact-finding investigation into her complaint of abuse of authority made against the Director-General, UNOG, under ST/SGB/2008/5.

17. On 5 December 2013, the Dispute Tribunal rendered the Impugned Judgment. The Tribunal found that the ASG/OHRM did not err in deciding that Ms. Benfield-Laporte's complaint against the Director-General, UNOG, did not provide sufficient grounds to warrant a formal fact-finding investigation. The Tribunal also found that while the behaviour demonstrated by the Director-General constituted an improper way to handle an uncomfortable situation, it was not such as to constitute a possible abuse of authority.

18. Nonetheless, two procedural irregularities flawed the decision, namely the six-month delay by the ASG/OHRM in reaching its decision was unjustified and undue and violated the requirement of Sections 5.3 and 5.14 of ST/SGB/2008/5 that such review be prompt, and the fact that the ASG/OHRM asked the alleged offender for his views before taking the contested decision breached Section 5.14 of ST/SGB/2008/5.

19. The Dispute Tribunal awarded Ms. Benfield-Laporte compensation for emotional distress and anxiety in the amount of USD 3,000 in view of the six-month delay by the Administration in communicating its decision to her.

Submissions

Case No. 2014-580

The Secretary-General's Appeal

20. The UNDT erred in concluding that the ASG/OHRM had no discretion as to how she conducted her review and assessment of the abuse of authority complaint, as it was not possible for the responsible official to assess whether a complaint was "made in good faith" or whether "there [were] sufficient grounds to warrant a formal fact-finding investigation" as required by ST/SGB/2008/5 by only looking at the complaint itself. Absent a discretion to assess whether allegations are well-grounded or made in good faith a majority of complaints filed would require a formal fact-finding investigation even when an investigation is unwarranted, to the detriment of the Organization's limited resources.

25. Concerning the Secretary-General's argument that the "unjustified and undue delay" in reaching a prompt decision was improperly calculated, Ms. Benfield-Laporte submits the UNDT rightly considered the matters of lateral transfer and abuse of authority to be two distinct administrative decisions with different time frames. Even discounting the five weeks spent requesting management evaluation of the lateral reassignment decision, OHRM was aware as of 11 July 2012, and again notified on 30 July 2012 that she intended to pursue her abuse of authority complaint with the ASG/OHRM.

26. Ms. Benfield-Laporte submits that she is not seeking rescission of the decision but rather moral damages in an amount which falls within the Tribunal's discretion to determine. Concerning moral damages, Ms. Benfield-Laporte distinguishes the Appeals Tribunal's ruling in *Kamal* on its facts.

Case No. 2014-575

Ms. Benfield-Laporte's Appeal

27. Ms. Benfield-Laporte contends that the UNDT erred insofar as it failed to draw all the necessary consequences from the fact that the contested decision violated Section 5.14 of ST/SGB/2008/5. In particular, although the Dispute Tribunal found that the decision-making procedure of the ASG/OHRM was flawed in two respects, the Dispute Tribunal only awarded her compensation for one of the procedural irregularities, namely the six-month delay by the Administration in communicating its decision to her.

28. Further, notwithstanding that the UNDT found two procedural irregularities marred the decision-making process, the UNDT failed to order rescission of the contested decision, unlike the UNDT in *Oummih*,⁴ which ordered rescission based on the same irregularities that arose in the present case.

29. Ms. Benfield-Laporte requests "adequate monetary compensation and any additional relief that the Appeals Tribunal may consider appropriate for moral damage".

⁴ *Oummih v. Secretary-General of the United Nations*, Judgment No. UNDT/2014/004.

The Secretary-General's Answer

30. The Secretary-General submits that there is no legal basis to support an order for rescission of the ASG/OHRM's decision as the UNDT found that the ASG/OHRM correctly decided that Ms. Benfield-Laporte's complaint did not provide sufficient grounds to warrant a formal fact-finding investigation. In any event, the Appeals Tribunal's jurisprudence in a series of cases involving promotion exercises has held that the UNDT erred in rescinding a non-selection decision and in awarding compensation in lieu of rescission, based on a procedural irregularity that would not have changed the outcome of the selection process. The same reasoning applies to the present case.

31. The Secretary-General also submits that the UNDT's Judgment in *Oummih* is under appeal before this Tribunal on the same point. In any event, the rescission of a decision not to initiate a formal fact-finding investigation of a complaint must ultimately be based on the facts of each individual case.

32. Furthermore, the Secretary-General reiterates that the UNDT erred in awarding compensation for moral damages on the basis of unjustified and undue delay in reviewing Ms. Benfield-Laporte's complaint, and submits the ASG/OHRM acted fully within her discretionary authority under ST/SGB/2008/5 in requesting the UNOG Director-General to comment on Ms. Benfield-Laporte's complaint. Ms. Benfield-Laporte has also failed to satisfy either criterion of the two-pronged test outlined by this Tribunal in *Asariotis*⁵ for the award of moral damages.

33. Accordingly, Ms. Benfield-Laporte's appeal should be dismissed in its entirety.

Considerations

34. In the instant case, Ms. Benfield-Laporte lodged a complaint 017c9ri-moral damage251r2umoritmag

36. The UNDT Judgment decided that there was no legal basis for the ASG/OHRM to contact the alleged offender for comments, as this was th

39. The reasonableness of this procedure is corroborated by the UNDT Judgment itself which found that the situation experienced on 3 November 2011 by Ms. Benfield-Laporte with the Director-General constituted “a very single, isolated and short incident” during which no dispute arose and no offensive language was used.⁷ Moreover, as the UNDT noted, Ms. Benfield-Laporte accepted that the Director-General had the right, and was acting within his competence, when he chose to select his own team.⁸ The UNDT Judgment concluded that the ASG/OHRM did not err in deciding that Ms. Benfield-Laporte’s complaint did not provide sufficient grounds to warrant a formal fact-finding investigation.⁹ This Tribunal finds no discernible error in the approach or reasoning of the Dispute Tribunal.

40. The Secretary-General challenges the UNDT’s award of compensation for emotional distress and anxiety caused by the six-month delay in deciding Ms. Benfield-Laporte’s complaint, and the UNDT’s finding that the process took six months. We concur with the UNDT Judgment that a period of six months to communicate the decision not to open a formal fact-finding investigation is far from prompt. In this regard, we reject the argument that the UNDT erred in including in its calculation the time spent by OHRM in obtaining comments from the Director-General; as the ASG/OHRM chose to undertake this action in order to reach its decision, it is not open to the Secretary-General to seek to discount the time spent in undertaking that action from the entire decision-making process.

Original and Authoritative Version: English

Dated this 26th day of February 2015 in New York, United States.

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Simón

(Signed)

Judge Thomas-Felix

Entered in the Register on this 17th day of April 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar