



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2015-UNAT-586

Alobwede

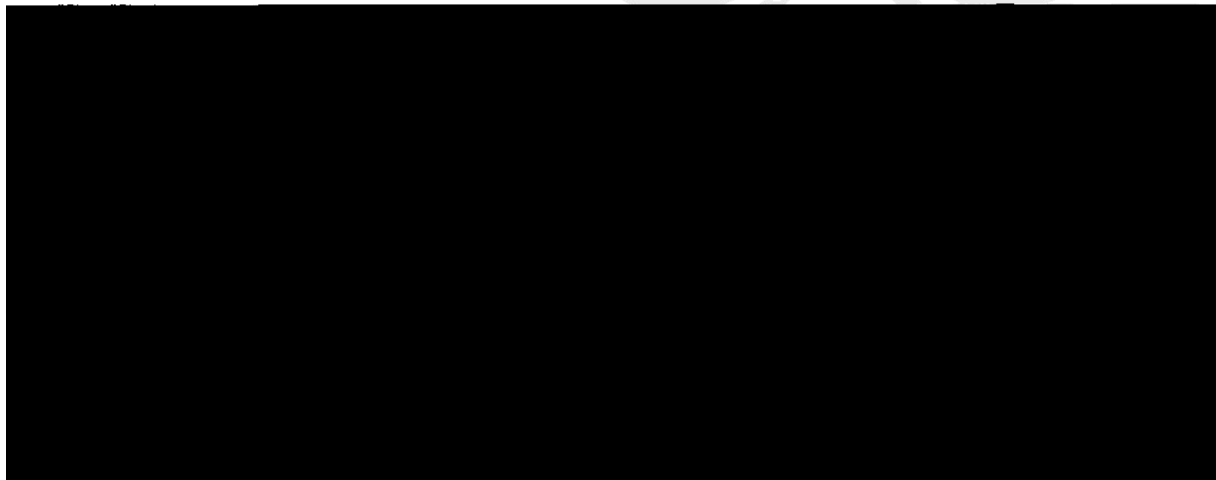
(Respondent/Appellant on Cross-Appeal)

v.

Secretary-General of the United Nations

(Appellant/Respondent on Cross-Appeal)

JUDGMENT



Counsel for Mr. Alobwede: Self-represented

Counsel for Secretary-General: Rupa Mitra

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... The Chief, LSS, responded to the Applicant by email of the same day. She acknowledged the points he had made, took responsibility for the situation and advised that the Applicant would be replaced by another interpreter.

... The Applicant replied in an open email to the Chief, LSS, and his fellow interpreters, reiterating that his complaint was that Mr. K. had failed to inform him in a timely fashion that he had been assigned to interpretation duties. He ended this email as follows:

While hoping that this matter should now be laid to rest, each and every one of us should learn to assume responsibility for the tasks we freely accepted to perform.

... On 20 July 2012, Mr. K. sent the Applicant a long email, which was copied to 29 colleagues in LSS. In that email, Mr. K. said he had “profound contempt” for the Applicant who he described as “a mentally retarded individual”; and “an ill-bred little miserable man”, “a seventy-year old and moribund individual” who was “hypocritical and despicable”. He referred to him as “the petty dissatisfied nutcase (mad or foolish person) that [the Applicant had] always been, the mean person who has made dishonesty his daily bread”, and said that “[the Applicant’s] memory [was] affected by some disorders that verge on Alzheimer’s disease”.

... Towards the end of this tirade after a string of sarcastic epithets, Mr. K. wrote:

You should know that I, [Mr. K.], have nothing but contempt for clowns of your ilk. Life has already rendered me very strong and if your intention is to wage war against me, well a piece of advice: find out from those who know me and you will have a better idea of the person you are getting ready to confront. I will stop at nothing, with no holds barred.

... The Head, IU, saw this email exchange while he was on leave. He called the Applicant and asked him to avoid writing any further emails to colleagues, while at the same time telling him not to react and to wait for his return to the office.

... Also on 20 July 2012, the Chief, LSS, replied to Mr. K.’s email, copying all colleagues to whom it had been sent (email as translated from French by the Applicant):

Dear Colleagues,

I have just read this message and all I can say to each and everyone is that, whatever be the circumstances, we owe one another respect and courtesy. There is a tone which is appropriate in verbal and written communications between colleagues. It would be proper for all of us to always remember the “essential values],a.[te2ore2.46y sond to kin foul(ica)462 Tc 0 Tw941be

... The Chief, LSS, says that on 20 July 2012, she called Mr. K. to her office, and verbally reprimanded him for his behaviour. The Applicant disputes this as he believes that in spite of her email to all staff, the Chief, LSS, was complicit in the sending of Mr. K.'s email.

... Upon his return from leave, the Head, IU, met with the Applicant and Mr. K. He says that the Applicant told him that he and Mr. K. were good friends, even showing him a tie he had received from Mr. K. as a present.

... On 4 August 2012, the Applicant lodged a formal complaint of harassment and abuse of authority against Mr. K., pursuant to ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority). The complaint was addressed to the then Registrar of the ICTR.

... On 29 August 2012, the Applicant was requested to submit a report of the prohibited conduct in accordance with sec. 5.13 of ST/SGB/2008/5. By reply of 13 September 2012, the Applicant pointed out, inter alia, that his complaint of 4 August 2012 already contained all the elements set out in sec. 5.13 of ST/SGB/2008/5.

... On 1 September 2012, the then Registrar ceased his functions and was replaced by an Acting Registrar of the ICTR.

... The Acting Registrar set up a fact-finding panel ("the panel") of three members to investigate the Applicant's complaint on 20 September 2012 and informed the Applicant on 1 October 2012. On 3 October 2012, the Applicant was notified of the names of the panel members and asked to submit a list of witnesses, which he did on 8 October 2012.

... In an email dated 18 October 2012 addressed to the Chief, LSS, and entitled "Apologies", Mr. K. took full responsibility for the contents of his email of 20 July 2012. He acknowledged that his email was unprofessional and unbecoming of

... By memorandum of 2 August 2013, the Registrar informed the Applicant that the dissenting opinion had not arrived and that he had decided to consider the report of the panel as it was. He noted that the panel had concluded the following:

[T]he investigative panel, by majority, found that the language used by Mr. [K.] was unprofessional and unbecom

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Judgment No. 2015-UNAT-586

Mr. Alobwede's Answer

12. In his appeal, the Secretary-General deliberately distorted the UNDT's finding that the fact-finding panel and the ICTR Registrar had "misinterpreted", and not "misapplied", the definition of harassment in ST/SGB/2008/5. This alone warrants a summary dismissal of the appeal.

13.

19. The Dispute Tribunal was required to address all the heads of damages that Mr. Alobwede had requested before determining the quantum of compensation. It had no discretion to select only one of the heads of damages that he had identified without explaining why and how the remaining ones were irrelevant.

20. The Dispute Tribunal exceeded its competence and erred in fact and law and violated the principle of *audi alteram partem* by offering *proprio motu* unsolicited anonymity to Mr. K. The UNDT did not find that Mr. K. was in greater need of confidentiality than all other employees of the Organization accused of misconduct. Anonymity may only be requested by the parties and is designed to protect victims, not perpetrators. There were no exceptional circumstances or compelling considerations that would justify Mr. K.'s anonymity.

21. The UNDT erred in fact and law by finding the report of the fact-finding panel formally and procedurally valid. It is a fatal irregularity for the report to be signed by only two members of the panel. The evidence in the report suggested that the panel members were not qualified for the task as they did not appear to have received the training required by Section 5.14 of ST/SGB/2008/5.

22. Mr. Alobwede requests that the Appeals Tribunal set aside the UNDT's awards of USD 5,000 and USD 10,000 and substitute them with one year's net base salary and two years' net base salary, order the Dispute Tribunal to issue a revised version of the Judgment identifying Mr. K. by his full name, and reverse the UNDT's finding that the report of the fact-finding panel was valid.

The Secretary-General's Answer to the Cross-appeal

23. The Dispute Tribunal was not required to analyse and discuss every case that Mr. Alobwede had cited in his UNDT application. Nor was it required to explain systematically

25. The cases that Mr. Alobwede cited in his UNDT application do not support his claim for an award of a higher compensation, as they involve either considerably longer periods of delay or substantially different facts.

26. The Dispute Tribunal based its awards of compensation on a properly reasoned opinion. In seeking additional compensation, Mr. Alobwede is simply attempting to re-litigate his case. In his appeal, he has failed to show any error on the part of the UNDT on either the merits or the procedure.

27. The Secretary-General takes no position with regard to Mr. Alobwede's claim to remove

36. According to the testimony of the Head of the IU, after the e-mail incident he had a discussion with Mr. Alobwede, during which Mr. Alobwede indicated that he and Mr. K. were good friends and Mr. K. had given him a tie as a present.

37. In all the circumstances, we find that the ICTR Registrar's decision was lawful, and the UNDT erred in not so finding, as well as in its consequent award of moral damages in the amount of USD 10,000 for the substantive breach of ST/SGB/2008/5.

38. The Dispute Tribunal found that the delays in addressing Mr. Alobwede's complaint of harassment and abuse of authority breached ST/SGB/2008/5, which required prompt and concrete action. It concluded that Mr. Alobwede's due process rights to prompt action were violated and awarded him USD 5,000 as moral damages for delay less USD 1,000 previously awarded by the Secretary-General.

39. We are satisfied that the UNDT erred in the level of award. We find that the Secretary-General's acknowledgement of the undue delay and his award of USD 1,000 to be sufficient recompense for the injury caused by the delay.

40. Regarding Mr. Alobwede's request that the Dispute Tribunal be ordered to revise the

Original and Authoritative Version: English

Dated this 30th day of October 2015 in New York, United States.

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Faherty

(Signed)

Judge Lussick

Entered in the Register on this 18th day of December 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar