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THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2015-UNAT-604

7. On 9 and 12 August 2012, Ms. Ocokoru filed a request for management evaluation of the decision of 20 June 2012 to abolish her post with UNMISS. By letter dated 24 September 2012, she was informed that the Secretary-General decided to uphold the contested decision. On 21 December 2012, Ms Ocokoru filed an application with the Dispute Tribunal which she amended on 18 April 2013, contesting the administrative decision not to renew her fixed-term appointment due to the abolition of her post.

8. On 15 January 2015, the UNDT rendered its Judgment. The UNDT found that bias existed against Ms. Ocokoru on the part of the UNMISS Administration and that such bias was so strong that the responsible CDU, Special Investigations Unit (SIU), and OIOS officers

Submissions

The Secretary-General's Appeal

12. The UNDT erred in concluding that Ms. Ocokoru had discharged her burden of proof in showing that the decision not to renew her appointment was motivated by extraneous motives and improper factors. In making its finding, the UNDT failed to consider the preponderance of evidence and improperly relied upon Ms. Ocokoru's version of the events without requiring her to provide any corroborating evidence.

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concerning the incident. Such evidence would have resulted in the opposite finding of fact, namely that Ms. Ocokoru had received closure regarding her complaint of sexual assault.

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21. Ms. Ocokoru accepts that the UNDT has discretion in awarding damages taking into account the circumstances of each case. The UNDT has not erred in exercising its discretion in ordering her reinstatement or, in the alternative, two years' net base salary; as well as six months' net base salary for procedural and substantive irregularities.
22. Ms. Ocokoru requests that the Appeals Tribunal dismiss the appeal with costs.
23. Ms. Ocokoru requests that the Appeals Tribunal hold an oral hearing.

Considerations

Preliminary issue - Request for an oral hearing

24. Ms. Ocokoru requests an oral hearing for the purpose of submitting additional evidence. The Appeals Tribunal does not find that an oral hearing is necessary in this case within the meaning of Article 8(3) of the Appeals Tribunal Statute (Statute) and Article 18(1) of its Rules of Procedure (Rules). Accordingly, the request for an oral hearing is denied.

Preliminary issue - Is the Secretary-General's appeal receivable?

25. On 6 April 2015, the Secretary-General filed his appeal in respect of Judgment No. UNDT/2015/004, challenging the UNDT's finding that the non-renewal of Ms. Ocokoru's appointment was motivated by extraneous factors and improper motives and the UNDT's consequent award of compensation to Ms. Ocokoru. In the course of his submissions, the Secretary-General states that he received the UNDT Judgment "[o]n 3 February 2015" and that "[t]he deadline for filing the present [a]ppeal ... is therefore 6 April 2015".

26. Ms. Ocokoru raises a preliminary legal issue that the Secretary-General's appeal is not receivable as it is filed out of time and without the Appeals Tribunal having granted an extension of time contrary to Article 7(1)(c) of the Statute and Article 7(1)(a) of the Rules. She submits that the question of "whether the [a]ppeal was timeously filed is a crucial matter in [these] proceeding[s] which should be preliminarily determined before consideration of the merit[s] of the [a]ppeal". Ms. Ocokoru takes issue with the Secretary-General's assertion that he received the UNDT Judgment on 3 February 2015, and submits that "[i]n fact the [UNDT] Judgment was transmitted to both parties on 16th January 2015 and therefore the [a]ppeal had to be filed by 16th March 2015", and that the appeal "was filed 82 days from the date of judgment".

30. The above e-mail was met with the following response from OLA to ALU/OHRM on 30 January 2015:

Dear ...,

Thank you for your prompt reply. We will look for the briefing in the coming days.

Our primary concern, however, was that we did not receive a transmittal e-mail of the judgment from the UNDT Registry in our "Secretary-General-AOJ" mailbox. We only discovered today that it had been issued by checking the UNDT website.

We will attempt to contact someone in [the Office of the Administration of Justice (OAJ)], as we have done in the past, to correct this.

31. On 2 February 2015, OLA e-mailed the OAJ Director:³

I am writing to bring the following matter to your attention and would be grateful for your assistance.

On 15 January 2015, the UNDT issued a judgment in the case of Ms. Ocokoru, UNDT Judgment No. 2015/004. This judgment is currently on the UNDT website. To date, however, this judgment has not been sent to the Secretary-General at the e-mail address established for the transmission of UNDT judgments -Secretary-General-AOJ@un.org.

I would be grateful if you could arrange for the judgment to be sent to the Secretary-General's email, particularly as an appeal is contemplated for the judgment. Accordingly, we would need a date of service from which to count the deadline for appeal.

32. The OAJ Director responded on 3 February 2015 advising that she had "heard from the UNDT Registry in Nairobi. There was an error at their end with the transmission that has been corrected."

33. The issue which falls to be determined from the foregoing sequence of events is when did time start running for the purposes of filing an appeal by the Secretary-General of the UNDT Judgment. We determine that the relevant date for the purposes of compliance with the Statute is 16 January 2015. We are satisfied from the chain of correspondence referred to

knowledge of the issuing of the UNDT Judgment and its contents. Indeed, it is apparent from the contents of the e-mail of 30 January 2015 from ALU/OHRM to OLA, that prior to that communication, ALU/OHRM had already started work on preparing a brief for OLA and had assigned staff members to this task. By virtue of all of the foregoing, the Secretary-General's assertion that he received the UNDT Judgment on 3 February 2015 is not legally or factually sustainable.

34. It may well be the case that there exists a practice within the UNDT whereby it issues its judgments to OLA as a matter of course. However, in the absence of any published UNDT rule or practice direction which decrees that transmission of the UNDT's judgments to OLA is the relevant transmission for the purposes of receipt by the Secretary-General, and in the circumstances of this case, where the UNDT Judgment in respect of Ms. Ocororu's case was transmitted to ALU/OHRM on 16 January 2015 (as acknowledged in its e-mail of 30 January 2015 to OLA), it is not permissible for the Secretary-General to seek to rely on an elected date of 3 February 2015, being the date when, apparently, the Judgment was transmitted to the e-mail address "Secretary-General-AOJ@un.org".

35. Article 7(1)(c) of the Statute provides that an appeal must be filed "within 60 calendar days of the receipt of the judgement of the Dispute Tribunal or, where the Appeals Tribunal has decided to waive or suspend that deadline in accordance with paragraph 3 of the present article, within the period specified by the Appeals Tribunal". Pursuant to Article 7(3) of the Statute, "[t]he Appeals Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases".

36. Similarly, the relevant part of Article 7 of the Rules provides:

1. Appeals instituting proceedings shall be submitted to the Appeals Tribunal through the Registrar within:

(a) 60 calendar days of the receipt by a party appealing a judgement of the Dispute Tribunal;

(b) ...; or

(c) A time limit fixed by the Appeals Tribunal under article 7.2 of the rules of procedure.

2. In exceptional cases, an appellant may submit a written request to the Appeals Tribunal seeking suspension, waiver or extension of the time limits referred to in article 7.1. The

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40. The Appeals Tribunal's approach in *Romman* was expressed as follows⁶

... The Appeals Tribunal has repeatedly held that it "has been strictly enforcing, and will continue to strictly enforce, the various time limits".

... In the instant case, a recommendation was made by the JAB prior to the establishment of the UNRWA Dispute Tribunal and the decision made by the Commissioner-General was notified to Mr. Romman on 11 December 2009. On 21 September 2010, Mr. Romman received a letter ... advising him that he should file

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