
UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Nielsen
(Appellant)

v.

Secretary-General of the United Nations
(Respondent)

JUDGMENT

Before:	Judge Mary Faherty, Presiding Judge Deborah Thomas-Felix Judge Richard Lussick
Case No.:	2015-738
Date:	24 March 2016
Registrar:	Weicheng Lin

authority against 12 staff members at PSB”, since OAS had “concluded its preliminary review of the matter and [had] found that a full investigation [was] not warranted”, therefore considering the matter “closed”.

... By email of 20 September 2014, the Applicant submitted a request for management evaluation against OAS decision not to trigger an investigation into Mrs. W.’s behaviour. She received a reply to her request on 31 October 2014 from the Executive Director, UNFPA, by which she was notified that OAS decisions were “outside the scope of review by UNFPA management”.

... On 10 November 2014, she submitted another request for management evaluation, this time against OAS['] decision not to trigger an investigation into the behaviour of Mrs. X., Mr. Z. and another colleague. She received a reply to her request on 15 December 2014 from the Executive Director, UNFPA, in which he advised her that OAS decisions were “outside the scope of review by UNFPA management”. As can be further inferred from that reply, the Applicant had also submitted, on 31 October 2014, another request for management evaluation, concerning OAS['] decision not to conduct investigations into her complaint against Mrs. Y.

... The Applicant filed her application with the [Dispute] Tribunal on 19 January 2015, and the Respondent submitted his reply on 24 February 2015.

... By Order No. 123 (GVA/2015) of 18 June 2015, the [Dispute] Tribunal requested the Respondent to file additional documentation with regard to the complaints filed [with] OAS by the Applicant, which he did on 25 June 2015.

3. On 29 June 2015, by way of Order No 133 (GVA/2015), the UNDT informed the parties that the case would be decided on the papers, without further hearings or submissions.

4. On the same day, 29 June 2015, the Dispute Tribunal rendered the Judgment now under appeal, Judgment No. UNDT/2015/063. First, the UNDT found that Ms. Nielsen’s challenge to OAS’ decision vis-à-vis Mrs. V was not receivable, since no complaint was ever received by OAS with respect to her, nor was a management evaluation ever requested. Regarding the merits of OAS’ decision vis-à-vis Mrs. W., Mrs. X., Mrs. Y. and Mr. Z., the UNDT noted that Ms. Nielsen’s complaint of 5 August 2014 against Mrs. W. and her complaint of 22 August 2014 against Mrs. X., Mrs. Y. and Mr. Z. were submitted to OAS more than 11 months after she had been placed on SLWFP in September 2013, and almost seven months after she had separated from UNFPA. Ms Nielsen had also changed teams within PSB at the end of July 2013 and had worked from home from August 2013. Consequently, the UNDT found that her complaints to OAS were filed more than six months after “the date of the

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Submissions

Ms. Nielsen's Appeal

10. Ms. Nielsen submits that the Appeals Tribunal should not use the fact that she does not have a legal background as an excuse or justification to reject her appeal.

11. Ms. Nielsen contends that the Dispute Tribunal erred in fact or exceeded its jurisdiction by not asking her directly when she complained to OASIS for the first time. Had the UNDT

OAIS' failure to admit misconduct toward her including harassment, discrimination and racism, despite clear proof; failure of the UNFPA management to provide her with a corrected PAD or respond to her queries regarding the tax implication of the damages previously awarded to her by the UNDT and the UNDT's failure to mention this in the Judgment; failure by UNFPA's Executive Director to review the behaviour of the involved PSB staff members despite her 27 requests for management evaluation; her unlawful placement on SLWFP; and her mistreatment by her PSB colleagues and the UNFPA management.

16. Ms. Nielsen requests the Appeals Tribunal to: amend the UNDT Judgment so it states that her placement on SLWFP was unlawful; state that 95 to 98 per cent of her performance evaluations were corrected to accurately reflect her competencies and good work; evaluate and deliver an opinion on the behaviour of her individual colleagues and refer at least one particular staff member for psychological assessment and another for coaching; state the full names of her PSB colleagues in this Judgment; request "UNFPA to cancel blocking [her] emails and to cancel the order given to UN City Security" to deny her access to the United Nations building complex; ensure that her case is not returned to the UNDT in Geneva or to Judge Laker, should it be remanded; and grant her compensation for her "painful experience".

The Secretary-General's Answer

17. The UNDT correctly determined that Ms. Nielsen's complaint concerning Mrs. V. was not receivable by the UNDT in the absence of a timely management evaluation request, as the Appeals Tribunal has consistently affirmed. The UNDT also correctly concluded that Ms. Nielsen's complaints of 5 and 22 August 2014 concerning Mrs. W., Mrs. X., Mrs. Y. and Mr. Z. were not receivable by OAI, as they were submitted after the six-month time limit outlined in the 2013 UNFPA Policy and were thus untimely. Ms. Nielsen's complaints were also not receivable by OAI because the conduct complained of therein failed to meet the *prima facie* threshold of conduct capable of constituting prohibited conduct under the 2013 UNFPA Policy.

18. The UNDT correctly determined that OAI's refusal to conduct an investigation into Ms. Nielsen's complaints against Mrs. W., Mrs. X., Mrs. Y. and Mr. Z. did not breach her rights. The UNDT properly examined the UNFPA regulatory framework regarding

misconduct and reviewed whether OASIS had properly followed the correct procedures. The UNDT's examination did not reveal any discrepancies. As OASIS is not obligated to open a full investigation into every complaint received, it was open to OASIS to determine that there was no need to open an investigation in Ms. Nielsen's case, and, by corollary, the UNDT was correct to find that OASIS had acted in accordance with the 2013 UNFPA Policy and Ms. Nielsen's rights were not breached.

19. Ms. Nielsen has not established any errors warranting a reversal of the UNDT Judgment or Order. Her appeal merely reargues and repeats matters raised before the UNDT, without identifying any errors in the UNDT Judgment, which the Appeals Tribunal has held is impermissible. Further, Ms. Nielsen's complaints about the UNDT Judge only evidence her dissatisfaction with that Judge's findings and conclusions. Ms. Nielsen also raises

Considerations

Preliminary issue-request for oral hearing

23. Ms. Nielsen has requested an oral hearing. The Appeals Tribunal does not find that an oral hearing is necessary or would assist in the expeditious and fair disposal of the case within the meaning of Article 18(1) of the Appeals Tribunal's Rules of Procedure. Accordingly, the request is denied.

Ms. Nielsen's motions

24. On 11 September 2015, Ms. Nielsen filed a motion "to request [the Appeals Tribunal] to extend [her] rights as a staff member or to admit that they were extended by the

Ms. Nielsen's appeal of UNDT Order No. 133 (GVA/2015)

29. In the context of reviewing the four applications filed by Ms. Nielsen, including the application which is the subject matter of the present appeal, the Dispute Tribunal by Order No. 133 (GVA/2015) determined that as “all relevant facts transpire from the documents on the files and only legal questions have to be assessed ... these cases may be decided on the papers, without further hearings or submissions from the parties”.⁹

30. Ms. Nielsen complains that the Dispute Tribunal exceeded its jurisdiction in disposing of her application without embarking on an oral hearing.

31. Pursuant to Article 16(1) of the Dispute Trib31.

34. The Dispute Tribunal determined that Ms. Nielsen's application insofar as it related to Mrs. W., Mrs. X., Mrs. Y. and Mr. Z. was receivable by the Dispute Tribunal in that it was satisfied that Ms. Nielsen had observed the requisite procedural step of seeking timely management evaluation of the respective contested decisions.

35. The UNDT next considered the "timeliness" of Ms. Nielsen's complaint to OAIIS regarding Mrs. W., Mrs. X., Mrs. Y. and Mr. Z. The face of the Judgment shows that the Dispute Tribunal determined that Ms. Nielsen

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and conclusions reached by OAIŠ in the course of its preliminary review with regard to the complaints Ms. Nielsen made against her four work colleagues.

40. It appears to be the case that the offer made by the Respondent to disclose the document was not taken up by the UNDT. It is the view of the Appeals Tribunal, given what was being challenged by Ms. Nielsen was the decision of OAIŠ not to launch a full investigation into the complaint, that the most prudent course of action for the Dispute Tribunal for the purpose of discharging its statutory function of judicial review of that decision would have been to require disclosure of the OAIŠ' written record. Absent any indication on the face of the Judgment that the written record of OAIŠ' preliminary investigation and conclusions was considered by the Dispute Tribunal, even if only on an ex parte basis, the Appeals Tribunal cannot be satisfied that there was sufficient judicial scrutiny of the basis upon which OAIŠ saw fit

Original and Authoritative Version: English

Dated this 24th day of March 2016 in New York, United States.

(Signed)

Judge Faherty, Presiding

(Signed)

Judge Thomas-Felix

(Signed)

Judge Lussick

Entered in the Register on this 24th day of May 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar