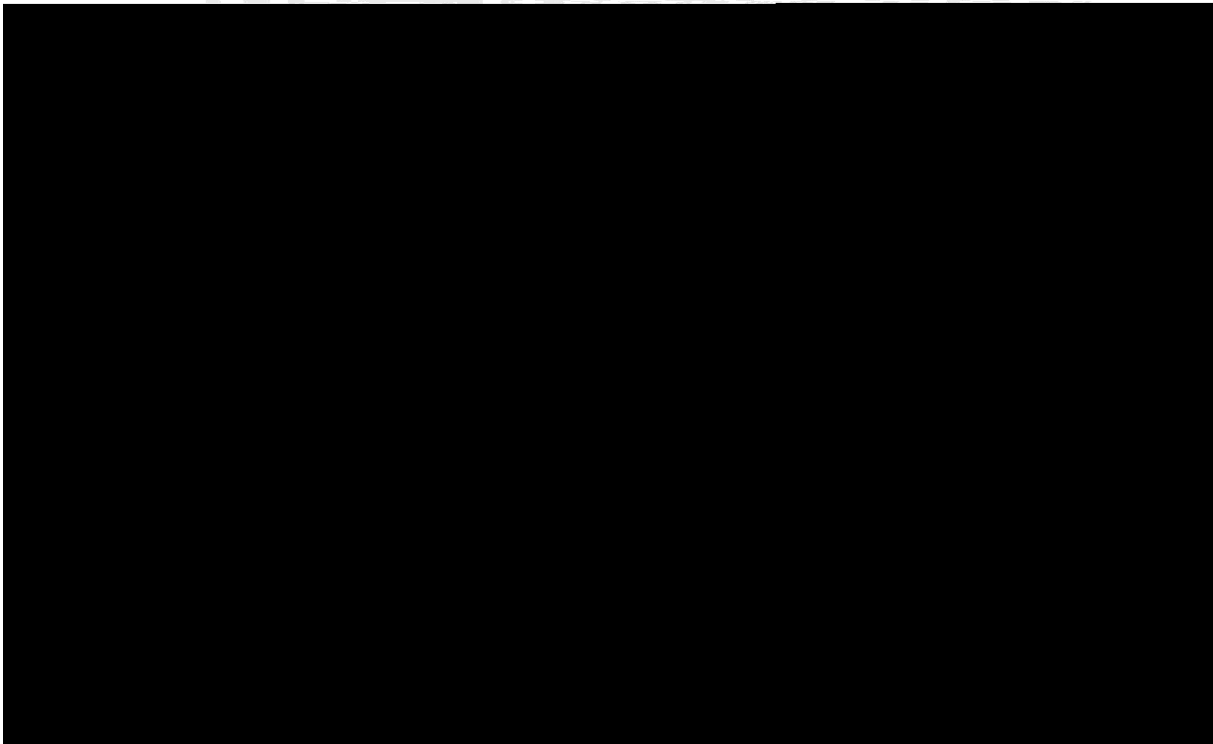




Judgment No. 2017-UNAT-774



Counsel for Mr. Awe: Self-represented

Counsel for Secretary-General: Rupa Mitra

JUDGE MARTHA HALFELD, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2016/206, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 18 November 2016, in the case of *Awe v. Secretary-General of the United Nations*. The Secretary-General filed the appeal on 17 January 2017, and Mr. Ekundayo Olukayode Awe filed an answer on 18 March 2017.

Facts and Procedure

2. The following facts as found by the Dispute Tribunal read as follows:¹

... At the material time, the Applicant was the [Office of Internal Oversight Services (OIOS)] Chief Resident Auditor at the United Nations Assistance Mission for Iraq (UNAMI).]

...

... On 20 January 2014, Ms. Yasin[, then Chief of Mission Support (CMS)] refused to authorise the Applicant's Movement of Personnel for travel to Baghdad on an official mission pursuant to his duties as Chief Resident Auditor. The Applicant's mission to Baghdad had already been approved by UNAMI's Chief of Staff (COS), Mr. Rutgers, and cleared by the Security Section.

... Subsequently, at the Senior Management Team (SMT) meeting on 22 January 2014, the COS made statements about the Applicant which the Applicant regards as containing "malicious innuendo" which was prejudicial to him. At the same meeting, the COS indicated, in the presence of the CMS, that [he] intended to convince the Special Representative of the Secretary-General (SRSG/SRSG Mladenov) to have the Applicant withdrawn from the Mission because he had been seriously compromised.

... Minutes of this meeting were circulated to about 25 staff members, who comprised - among others - members of the management team, section chiefs and administrative assistants.

... The Minutes stated:

Issue of the Auditor's two week pre-planning mission to Baghdad was discussed and rationale for it questioned. It seems that making up for financial loss incurred due to the move to Kuwait features prominently in

the Chief of the Auditing Unit. CMS has suggested rotating out the auditor because he has been seriously compromised.

... During one of the Applicant's interviews with the Panel, he was made to understand that its report would be submitted to the SRSG by the end of October. Prior to that, the Applicant was to have received a *verbatim* copy of his statement for his review and subsequent signature.

... On 11 November 2014, the Applicant wrote to the Panel to enquire into the status of the investigation and noted that he was yet to receive a copy of his statement. The Panel responded that their report was still pending, but sent him a copy of his statement[,] which the Applicant reviewed and returned.

... The Applicant was reassigned to serve in the United Nations Multidimensional Integrated Stabilisation Mission in Central African Republic (MINUSCA). He started in MINUSCA on 20 November 2014.

... On 17 December 2014, the Applicant wrote to SRSG Mladenov complaining about the delay in reviewing his complaint. The Applicant stressed that he had an interest in "getting (his) name cleared sooner rather than later because retention of the offending statements constituted a source of continued injury to (his) dignity, character, personal and professional reputation". This complaint was copied to the ASG/OHRM and the then USG/DFS.

... The Applicant did not receive a response from any of the recipients.

... On 13 January 2015, the Applicant requested management evaluation of the Respondent's violation of his due process rights and for prompt consideration of his complaint pursuant to ST/SGB/2008/5.

... On 20 January 2015, the Management Evaluation Unit (MEU) informed the Applicant that they found the Applicant's request for review to be not receivable.

... On 27 January 2015, the Applicant wrote to SRSG Mladenov again enquiring into the status of his complaint.

... The SRSG responded by informing the Applicant that the FFP had indicated that it would submit its Report by 15 February 2015, and that he would

... SRSG Kubis received the Panel's Report on 24 March 2015.

... The relevant paragraphs of the FFP's summary of their findings [read:

[B]y preventing [the Applicant's] official travel to Baghdad on 21 January [2014] from taking place on unsubstantiated grounds and without exercising proper diligence, Mr Rutgers and Ms Yasin violated staff rule 1.2 (q) and abused the power and authority vested in them to process MOPs for official travel;

[B]y using false pretence, making unsubstantiated and derogatory remarks against Mr Awe in the presence of others and by circulating the minutes of the meeting in which such remarks has [sic] been affixed, Mr Rutgers and Ms Yasin violated the provisions of art. 101 (3) of the Charter of the United Nations, and the core values set out in former staff regulation 1.2 (a) and former staff rules 101.2(d), 201.2(d) and 301.3(d), which provide that every staff member has the right to be treated with dignity and respect;

[B]y making unsubstantiated and derogatory remarks against [the Applicant] in the presence of others and by circulating the minutes of the meeting in which such remarks had been affixed, Mr Rutgers and Ms Yasin failed to uphold the core value of professionalism and live up to the standards of efficiency and competence expected of them, in addition to creating a more challenging and possibly hostile working environment for [the Applicant];

[B]y attempting to have [the Applicant] removed from UNAMI on unsubstantiated grounds, Ms Yasin failed to uphold the core value of integrity and the standard of efficiency.][²]

... On 21 May 2015, SRSG Kubis informed the Applicant and the USG/DFS of the outcome of the investigation. The memorandum detailing the Panel's findings was dated 23 April 2015.

... The Applicant was informed that as a result of the Panel's findings, a letter of reprimand had been placed in Mr. Rutgers's Official Personnel File. With regard to Ms. Yasin, the matter was referred to the USG/DFS because she was no longer assigned to UNAMI.

... On 9 June 2015, the USG/DFS acknowledged receipt of SRSG Kubis' referral. The USG/DFS determined that the complexity of the case required the involvement of an expert trained in dealing with complaints of this nature.

... On 15 June 2015, the matter was forwarded to the USG of the Department of Peacekeeping Operations (USG/DPKO).

[²] These FFP findings are taken from para. 68 of the impugned Judgment.

5. On the issue of compensation, the Dispute Tribunal noted the continuing damage to Mr. Awe's personal and professional standing and reputation as a result of the failure to expunge the derogatory comments from the SMT meeting minutes and in light of Mr. Awe's own complaint of humiliation and disrespectful treatment by the Mission's senior management team, in addition to the delays in the investigation and reporting processes. The UNDT thus concluded that Mr. Awe "suffered damage to his reputation and professional standing exacerbated by the continuing and unacceptable delay in affording him the relief to which he is entitled".⁶

6. By way of remedy, the UNDT ordered (i) the immediate removal of the offending references from the minutes of the SMT meeting on 22 January 2014 and the written notification of the FFP's findings to all recipients of the said minutes; (ii) USD 3,000 to be paid to Mr. Awe for procedural error; and, (iii) USD 15,000 to be paid to Mr. Awe for harm suffered.

Submissions

The Secretary-General's Appeal

7. The UNDT erred in law by finding that Section 5.18(c) of ST/SGB/2008/5 required the SRSG to refer to the matter of Mr. Rutgers and Ms. Yasin to the ASG/OHRM for disciplinary action. The UNDT misconstrued the legal framework of ST/SGB/2008/5. Under that Secretary-General's Bulletin, the role of the FFP was to conduct a fact-finding investigation, to identify the relevant facts concerning Mr. Awe's complaint, and then to detail such facts in a

13.

operational issues; and (iii) made comments which had the likelihood or the great potential to discredit Mr. Awe's personal and professional integrity, character and standing, as well as incite others to form an adverse opinion about Mr. Awe and to disrespect him, creating a more challenging working environment for him among an undetermined number of colleagues (since the copies had been circulated widely within and outside the mission).

19. The FFP further concluded that Mr. Awe's superiors, amongst others, "violated staff rule 1.2(q) and abused the power and authority vested in them ...", used false pretense and made unsubstantiated and derogatory remarks against him in the presence of others. Moreover, by circulating the minutes of the meeting in which such remarks has been affixed, they violated the core values of the Organization and Mr. Awe's right to be treated with dignity and respect, failed to uphold the core value of professionalism and live up to the standards of efficiency and competence expected of them, and created a more challenging and possibly hostile working environment for Mr. Awe.⁷

20. The FFP additionally found "the failure of UNAMI and OIOS Audit [Headquarters (HQ)] to adequately address the 21 January 2014 SMM [senior management meeting] incident".

Retraction of the minutes – effective remedy

21. In spite of the FFP's undisputed conclusions, Mr. Awe's only remedy was a letter of reprimand placed in Mr. Rutgers' Official Personnel File. Nothing has been done to clear Mr. Awe's name and the unlawful offending statements in the SMT minutes continue to damage his professional reputation. The reprimand in the offender's file and Mr. Rutgers' private apology⁸ do not constitute appropriate relief for the restoration of Mr. Awe's reputation and career, as there is no evidence that it was known by the people who received the SMT minutes containing the offending references.

22. Despite the Administration's insinuation about the limited impact of the SMT minutes, the question is that it did not meet its burs

27. The UNDT found that the FFP's report clearly and unequivocally established that the allegations made by Mr. Awe were well-founded and that the conduct in question amounted to possible misconduct. The UNDT hence concluded that the non-referral to the ASG/OHRM for disciplinary action was an error of procedure which denied Mr. Awe his contractual right to be afforded the benefit and protection against prohibited conduct in accordance with the applicable legislation, and that Mr. Awe was therefore entitled to an award of compensation for that procedural error.

28. Section 5.18(c) of ST/SGB/2008/5 provides that:¹²

If the report indicates that the allegations were well-founded and that the conduct in question amounts to possible misconduct, the responsible official shall refer the matter to the Assistant Secretary-General for Human Resources Management for disciplinary action. ...

29. While we agree that the FFP's report established that the allegations were well-founded and that the conduct in questi

Compensation for harm

32. The UNDT awarded USD 15,000 to Mr. Awe as compensation for harm to reputation and professional standing based on the FFP's conclusions.

33. The UNDT also stated:¹⁵

The Tribunal finds that the Applicant's claim is well founded and that he suffered damage to his reputation and professional standing exacerbated by the continuing and unacceptable delay in affording him the relief to which he is entitled. The Applicant is entitled to compensation for the harm suffered, such harm being assessed well above the midpoint in the range of awards made by the Tribunal.

34. In the present case, there is no dispute about the FFP's findings, which clearly found that i) there were unsubstantiated and derogatory remarks against Mr. Awe in the presence of others, including the most senior managers in the Mission; ii) the minutes of the SMT meeting in which such remarks had been included were circulated to "a wide circle of individuals"; and, iii) there had been an attempt to have Mr. Awe removed from UNAMI on unsubstantiated grounds. The FFP interviewed fourteen witnesses.

35. The FFP concluded that "regardless of the intent of the concerned parties, such comments had *de facto* a harmful effect/impact" in discrediting Mr. Awe's personal and professional integrity, character and standing among an undetermined number of colleagues,¹⁶ "particularly in such a close environment as Baghdad".¹⁷ Additionally, SRSG Mladenov recognized the "damage caused" to Mr. Awe by the comments made and documented in the SMT minutes.¹⁸

of the formal complaint or report" (emphases added). The exceptional circumstances (the deteriorating security situation in Iraq and the appointment of a new SRSG) cannot justify a delay

36. In view of the foregoing and also considering the failure to provide prompt and effective redress (the minutes still being valid in the eyes of the participants; the offending statements not having been removed from the minutes; and, the FFP's report not having been circulated),¹⁹ we are satisfied that sufficient evidence was provided to justify the award of compensation for harm to reputation and professional standing in the present case.

37. Nevertheless, it does not appear that the UNDT took into account that this harm has a temporary nature, which will not affect the totality of Mr. Awe's career—particularly since the Appeals Tribunal upholds the removal of the offending references from the SMT minutes, with communication to all recipients, as ordered by the UNDT in paragraph 85(a) of its Judgment.

38. Accordingly, we consider USD 5,000 to be a more appropriate amount to compensate the harm suffered by Mr. Awe.

¹⁹ We also take note of the fact that Mr. Awe currently holds a post as Resident Auditor in MINUSMA (Mali). At the time of the events, he held the post of Chief Resident Auditor at UNAMI (Kuwait).

Judgment

39. The appeal is granted in part; Judgment No. UNDT/2016/206 is vacated, insofar as it awards compensation for procedural error, and modified, insofar as the award of compensation for harm is reduced to USD 5,000. The UNDT's order, set forth in paragraph 85(a) of the impugned Judgment, to remove the offending references in the minutes and to write to all recipients to inform them of the FFP's findings is affirmed.

Original and Authoritative Version: English

Dated this 14th day of July 2017 in Vienna, Austria.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Thomas-Felix

(Signed)

Judge Lussick

Entered in the Register on this 5th day of September 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar