



Judgment No. 2017-UNAT-783



... By email of 23 June 2012 a UNDP colleague, copying, amongst others, Ms. FW and the then Deputy Regional Director, noted that it had been agreed, during the Applicant's mission to [HQ], that she would be "reassigned" from the UAE to [HQ] with effect from the end of July 2012. The UNDP colleague also noted that she understood that the Applicant [was] "in discussions with BDP regarding [the Applicant's] eventual assignment with BDP" and that the "reassignment" would proceed "[r]egardless of the outcome of these discussions".

... By email of the same date, the Applic

... On 1 October 2013, in an email to the Officer-in-Charge of BDP/DGG, copying also the Director of the Office of Human Resources[...] (“the OHR Director”) and the Deputy Assistant Administrator and Deputy Director of BDP, Ms. MS, the Applicant indicated, amongst others, that she had [been] expecting a “constructive dialogue with BDP management” and that she felt that BDP/DGG had not made any effort to

... On 2 June 2014, the Applicant requested to amend her 22 May 2014 request for management evaluation [] and now requested that the decision to leave her status as unassigned, as resulted from the 27 May 2014 contract extension, be also reviewed.

... On 1 July 2014, the Applicant received the response to her request for

c. Accordingly, on 1 February 2015, she was placed on “unassigned” status.

... The Applicant remained on sick leave from February 2014 until 31 July 2015 after which she was separated from service.

3. The UNDT rendered its Judgment on 22 December 2016 finding that the decision that Ms. Sarrouh’s position with BPPS had ended and the position she was encumbering was abolished as of 31 January 2015 was unlawful since Ms. Sarrouh had not been assigned to a post with BPPS at the time she received the contested decision. Even if her post had actually been abolished, the Dispute Tribunal concluded that her rights in accordance with Staff Rule 9.6(e)(ii) were not respected. The UNDT further considered that “it appears that the real reason for the termination was [Ms. Sarrouh’s] extended sick leave”.³ By way of remedy, the UNDT ordered the Secretary-General to pay compensation in lieu of rescission of the contested decision in the amount of two years and 28 days’ (31 July 2015 to 28 August 2017) net base salary at the D-1 step 5 level in addition to compensation equal to both the staff member’s and the Organization’s pension contributions which would have been paid to the United Nations Joint Staff Pension Fund (UNJSPF) during the same period. The UNDT calculated the relevant period based on its findings that “if the post had not been abolished, [Ms. Sarrouh’s] contract would have been extended for another two years” and in light of the “extension from April 2013 to December 2013, [Ms. Sarrouh’s] contract would therefore likely have been extended from 1 January 2014 to 31 December 2016” and “that her

counter-motion be part of the record before the Appeals Tribunal and that the UNJSPF produce evidence of the retiremen

the management evaluation response of 1 July 2014 when it found that the latter showed that her contract would have been extended for another two years, had her post not been abolished. The UNDT made a further factual error by assuming J in the absence of any evidentiary submissions before it J

During the hearing before the UNDT, Ms. Sarrouh gave evidence that she did not have any employment and that her placement at McGill University was a “non-salary” honorary position. She was not cross-examined on this evidence, which was not contested in any way.

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and that in the absence of any error of law or manifestly unreasonable factual findings, the Appeals Tribunal will not interfere with the discretion vested in the Dispute Tribunal to decide on remedy.⁸

26. By Order No. 280 (2017), the Secretary-General was given leave to file “additional evidence”. However, it is now clear that the Secretary-General did not produce any case to the UNDT contesting Ms. Sarrouh’s claim for compensation. As the Secretary-General cannot present such a case for the first time on appeal, the “additional evidence” is therefore irrelevant.

27. It follows that for the foregoing reasons the appeal must fail.

28. However, we reject Ms. Sarrouh’s claim for costs of USD 10,000 on the ground that the Secretary-General’s appeal falls well short of a manifest abuse of the appeals process.⁹

⁸ *Faraj v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-587, para. 26.

⁹ Article 9(2) of the Statute of the Appeals Tribunal provides: “Where the Appeals Tribunal determines that a party has manifestly abused the appeals process, it may award costs against that party.”

Judgment

29. The appeal is dismissed and Judgment No. UNDT/2016/220 is affirmed.

Original and Authoritative Version: English

Dated this 27th day of October 2017 in New York, United States.

(Signed)

Judge Lussick, Presiding

(Signed)

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