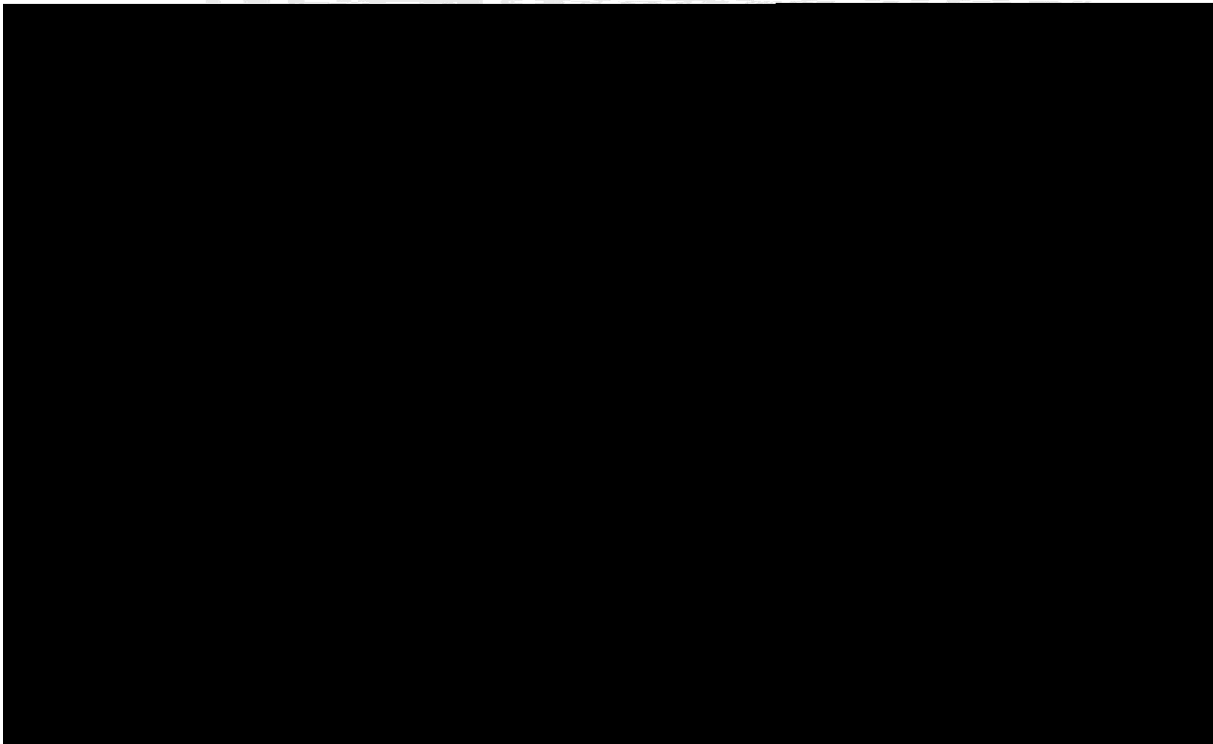


Judgment No. 2018-UNAT-815



Counsel for Mr. Nchimbi: Self-represented

Counsel for Secretary-General: Nathalie Defrasne

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2018-UNAT-815

6.4 [The Applicant] failed in his responsibilities as the assignee of the items by failing to report the matter to SSU when he discovered that the items were

recommended that the appropriate written off process/disposal of missing [United Nations] Owned Equipment be applied to the missing items.

pension. By way of relief, the UNDT ordered payment of compensation in the amount of USD 1,500 “for the three months’ unlawful procedural delay”.⁵

5. As stated above, Mr. Nchimbi filed his appeal on 16 August 2017 and the Secretary-General filed an answer on 17 October 2017. On 8 November 2017, Mr. Nchimbi filed a motion seeking leave to file additional pleadings in response to the Secretary-General’s answer to his appeal. By Order No. 304 (2017) dated 4 December 2017, the Appeals Tribunal denied the motion finding that Mr. Nchimbi had failed to demonstrate the existence of exceptional circumstances.

Submissions

Case No. 2017-1103

The Secretary-General’s Appeal

6. The Secretary-General submits that the UNDT erred on a question of law in finding that the ICTR Administration had unlawfully delayed Mr. Nchimbi’s check-out process. Under United Nations Financial Regulation 6.5 and Financial Rule 106.7, the Organization has an obligation to investigate any missing items in order to determine whether said items were lost or stolen and who is responsible for the disappearance, irrespective of whether the life expectancy of such assets may have been reached. In the present case, there was confusion as to the number of lost items assigned to Mr. Nchimbi and the circumstances under which those items had disappeared. Accordingly, the ICTR Administration could not simply write off the items but rather exercised due diligence in requesting an investigation. The delay of three and a half months in Mr. Nchimbi’s check-out process was, therefore, not only reasonable but necessary to account for the loss of property in accordance with the Financial Regulations and Rules.

7. Furthermore, the Secretary-General asserts that the UNDT erred in its award of compensation for delay. He claims that there was no procedural delay warranting the award of compensation. As stated above, the ICTR Administration had an obligation to investigate the missing items and the period of three and a half months to investigate and proceed with Mr. Nchimbi’s check-out was not unreasonable. Even if there had been such unreasonable delay, the UNDT erred in awarding compensation without evidence of harm in contravention of

⁵ *Ibid.*, para. 57.

Article 10(5)(b) of the UNDT Statute. Mr. Nchimbi's "vague statements" that he had suffered emotional distress and anxiety and that the ICTR Administration had acted in bad faith against him are not sufficient evidence of harm.

8. Based on the foregoing, the Secretary-General requests that the Appeals Tribunal vacate the impugned Judgment, "except to the extent that it held that the decisions (a) to unlawfully deduct his final leave days; (b) not to provide him with a copy of the report of an investigati[on] conducted against him; and (c) the failure of the Secretary[-]General and [... OIOS to intervene in the matter] were not receivable *ratione materiae*".

Mr. Nchimbi's Answer

9. Mr. Nchimbi submits that the Secretary-General's appeal misstates or disregards important facts. He asserts that the amount he was charged for the alleged missing items was incorrectly calculated under the ICTR Information Circular No. 62 dated 15 December 2015 on "Sale of items to staff members – prices" (Circular No. 62). Moreover, it was incorrectly stated that the items had been lost, whereas in fact some of them had been removed when he was on leave. Mr. Nchimbi further claims that he was "discriminated, humiliated and singled out as a scapegoat for the investigation that was conducted" in particular because there was no evidence that such investigation was conducted against any other staff member, as correctly found by the UNDT. The language of Financial Regulation 6.5 does not give the Secretary-General the mandate of misusing the powers vested in him and to arbitrarily decide to conduct investigations in certain cases and not in others.

10. Mr. Nchimbi contends that the UNDT did not err on a question of law by concluding that the investigation conducted against him was unwarranted and that the ICTR Administration had unlawfully delayed his check-out process and asks that the Appeals Tribunal "affirm that position in the interest of justice and available facts and evidence".

11. Regarding the compensation award, Mr. Nchimbi submits that the UNDT should have granted a much higher compensation in line with previous UNDT cases and asks the Appeals Tribunal to "reconsider" the amount. Moreover, there was sufficient evidence that procedural delays occurred and it was the Secretary-General who failed to discharge the evidentiary burden to show, through clear and convincing evidence, that the procedural delay did not warrant compensation.

required to address the points of argument that it considers relevant to resolve the case. In addition, Mr. Nchimbi's submission that no list of the lost items has been provided is incorrect.

20. Finally, according to the Secretary-General, Mr. Nchimbi has failed to demonstrate that the UNDT erred in its award of compensation. In accordance with Article 10(5)(b) of the UNDT Statute, the UNDT may only award compensation supported by evidence of harm for which the applicant bears the burden of proof. The ICTR Administration had an obligation under the Financial Regulations and Rules to undertake an investigation into the disappearance of missing items and it promptly and lawfully conducted the investigation within a period of three and a half months. Mr. Nchimbi has failed to provide evidence with regard to alleged harassment, intimidation or damage to his reputation. He merely argues that the UNDT jurisprudence awards higher compensation than the one he received for emotional harm and harm to reputation without showing that he actually suffered such harm. His "vague statements" do not constitute evidence of harm warranting any compensation, let alone higher compensation. Mr. Nchimbi has not presented any evidence as to how the alleged criminal suit supports his arguments. If anything, this evidence demonstrates serious misconduct on his part.

21. In light of the foregoing, the Secretary-General requests that the Appeals Tribunal dismiss Mr. Nchimbi's appeal in its entirety.

Considerations

22. The UNDT in its Judgment observed that Mr. Nchimbi's application with the Dispute Tribunal challenged the following decisions of the Secretary-General:

a)

b) Not to provide him with a copy of the repo

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2018-UNAT-815