

Judgment No. 2018-UNAT-870



Counsel for Appellant: Self-represented

Counsel for Respondent: John Stompor

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2018/040, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 20 March 2018, in the case of *Applicant v. Secretary-General of the United Nations*. Ms. Iveta Cherneva filed the appeal on 25 March 2018, and the Secretary-General filed his answer on 25 May 2018.

Facts and Procedure

2. In October 2016, Ms. Cherneva commenced service as a Corporate Research Officer (P-2) with the Private Fundraising and Partnerships Division (PFP), United Nations Children's Fund (UNICEF), under a two-year fixed-term contract.

3. On 8 April 2017, Ms. Cherneva wrote an e-mail to, *inter alia*, the Human Resources Manager and the Human Resources Learning and Development Specialist within PFP regarding a "situation" with her first reporting officer. On 10 April 2017, the Learning and Development Specialist responded to Ms. Cherneva's e-mail, suggesting a meeting between Ms. Cherneva and her first reporting officer. The meeting took place shortly thereafter.

4. On 17 May 2017, Ms. Cherneva went on certified sick leave (CSL) with full pay. Effective 9 August 2017, and following exhaustion of her entitlement to CSL with full pay, Ms. Cherneva was placed on CSL with half pay, combined with half annual leave so that she could continue to be on full pay status.

5. Upon exhaustion of her annual leave balance, Ms. Cherneva was placed on CSL with half pay effective 24 August 2017. However, she was erroneously paid full salary from 25 August 2017 until 30 September 2017.

6. On 9 September 2017, Ms. Cherneva submitted to UNICEF's Ethics Office a request for whistle-blower protection, alleging that her e-mail of 8 April 2017 constituted a protected activity requiring protection from retaliation and noting that her health situation was at least partly due to some actions of her supervisors after she had sent the said e-mail. Subsequently, there were several communications between Ms. Cherneva and the Ethics Advisor, UNICEF, in which the latter requested additional information to substantiate Ms. Cherneva's request for such protection. The Ethics Advisor informed

Ms. Cherneva that in the absence of any further information from Ms. Cherneva, she would complete the preliminary review by early December.

7. By e-mail dated 17 October 2017, the Chief, Human Resources, PFP (Chief HR), informed Ms. Cherneva that her entitlement to CSL with half pay would be exhausted on 8 November 2017, and that based on her leave use she would be placed on special leave without pay (SLWOP) effective 9 November 2017.

8. On 15 November 2017, the Chief HR discussed with Ms. Cherneva the option of submitting her case to the United Nations Medical Director and to the United Nations Staff Pension Committee for consideration for medical termination and disability benefits from the United Nations Joint Staff Pension Fund. Ms. Cherneva declined that option. The Chief HR also informed Ms. Cherneva that her health insurance coverage would expire in light of her being on SLWOP.

9. On 5 December 2017, Ms. Cherneva requested management evaluation of a) the decision to place her on SLWOP, effective 9 November 2017; and (b) the situation in which “one month and a half after the deadline” for the Ethics Office to make a determination on her request for whistle-blower protection, she had not received the determination.

10. On 6 December 2017, the Principal Adviser, Ethics, informed Ms. Cherneva of the UNICEF Ethics Office’s determination that a *prima facie* case of retaliation against her had not been established and expressed her regret fo

informed Ms. Cherneva that, in view of the above-referenced UNDT Order, she was being placed on special leave with half pay and was being retroactively granted special leave with half pay from the time of the exhaustion of her sick leave entitlements.

12. On 13 December 2017, Ms. Cherneva requested the Chairperson of the Ethics Panel of the United Nations to review the UNICEF Ethics Office's determination that there was no *prima facie* case of retaliation against Ms. Cherneva. On 16 February 2018, the Chairperson of the Ethics Panel informed Ms. Cherneva that she agreed with the UNICEF Ethics Office's determination.

13. On 12 January 2018, UNICEF's Deputy Executive Director for Management informed Ms. Cherneva of the outcome of the management evaluation, noting a) the placement on special leave with half pay effective 21 December 2017 and the retroactive grant of special leave with half pay from the time of the exhaustion of her sick leave entitlements were in compliance with Order No. 250 (GVA/2017); and that b) her complaint of non-receipt of a response from the Ethics Office was not only moot but also that management evaluation was not the right mechanism to challenge it.

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of the application was not receivable *ratione materiae* since it could not identify any administrative decision subject to judicial review.

Submissions

Ms. Cherneva's Appeal

16. Ms. Cherneva submits that the UNDT improperly determined that the Administration's decision to place her on SLWOP was due to an administrative error. Ms. Cherneva claims that the unlawful decision to place her on SLWOP was a matter of a purposeful retaliatory act and she had contested, before the UNDT, the Administration's claim that placing her on SLWOP was an administrative error. As such, the UNDT should have examined the "administrative error" aspect in the consideration of the merits. The UNDT committed an error of legal reasoning by omitting to examine the Administration's motives behind placing her on SLWOP and by presenting the disputed claim as an established fact in paragraph 8 of its Judgment.

17. Ms. Cherneva further submits that the Administration, by placing her on SLWOP illegally, had intended to "push [her] towards resigning...with the motive to cover up the informal investigations [] it [had] carried out against [her] for almost one year", which involved illegally wiretapping her apartment. Almost two months had passed between when Ms. Cherneva was notified of the decision to place her on SLWOP and the UNDT's Order No. 250 finding that she should have been granted special leave with half pay. Had the decision to place her on SLWOP been simply an administrative error, the Administration would have corrected the course of action and her case would have been correctly forwarded to the UN Medical Doctor for determination. The fact that the situation had remained unchanged until after the UNDT issued its Order signals that placing her on SLWOP could not have been an administrative error.

18. Ms. Cherneva requests financial compensation, within a range deemed reasonable by the Appeals Tribunal, for moral and reputational damages, as well as damages related to missed professional opportunities, health, and violations of rights and privacy.

The Secretary-General's Answer

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Ms. Cherneva contest the UNDT's holding that Ms. Cherneva's application, so far as it concerned the finding by the management evaluation that her complaint of 8 April 2017 raised workplace issues rather than violations of her rights and breaches of UNkekekekekekekekekekegrhat

33. We agree with the UNDT and uphold its findings that since the decision to place Ms. Cherneva on SLWOP was rescinded, following Order No. 250 (GVA/2017), the matter was moot.

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37. At any rate, the Administration's misinterpretation of the existing legal framework (mistaken belief) that it needed Ms. Cherneva's consent to refer the case to the

40. Accordingly, the appeal fails.

Judgment

41. The appeal is dismissed and Judgment No. UNDT/2018/040 is hereby affirmed.

Original and Authoritative Version: English

Dated this 26th day of October 2018 in New York, United States.

(Signed)

Judge Raikos, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Thomas-Felix

Entered in the Register on this 20th day of December 2018 in New York, United States.

(Signed)

Weicheng Lin, Registrar