

Case No.:

Introduction

1. This judgment concerns one of the three issues raised by the applicant in her case before the Dispute Tribunal, namely her appeal of a decision not to attribute her for contributions to a publication named “ECOWAS [the Economic Community of West African States] Poverty Profile”, dated November 2007. Of course, ECOWAS is not a UN entity. She worked at the P-3 level in the United Nations Statistic Division (UNSD) of the Department of Economic and Social Affairs where she is still employed, and was involved in developing some aspects of the material used in the publication but, unlike some others working for the UNSD, was not accredited in the preface. The two critical questions in the case are who made the decision not to attribute the applicant and what was the actual contribution of the applicant to the publication.

2. Two other applications concerning the applicant’s non-promotion and a claim of harassment/discrimination against her were, at first, to be dealt with in conjunction with the non-attribution case but I have ordered them to be separately decided since the applicant has only recently decided to substantially expand the evidence she wishes to adduce and it cannot be ready for adjudication before the end of my tenure as a judge with the Tribunal on 30 June 2010.

Legal instruments

3. In her submissions, the applicant refers to ST/AI/189/Add.6/Rev.5 of 22 August 2008, which entered into force on 2 September 2008, as the legal basis for her attribution claim. However, this administrative instruction was not applicable at the time of publication, which was in November 2007, and ST/AI/189/Add.6/Rev.4 of 12 February 1996 (“Attribution of authorship in United Nations documents, publications and other official papers”) instead applies. Its relevant provisions provide (emphasis added) –

General principles

3. The rules on attribution of authorship apply to *all United Nations documents and publications*, as well as to papers prepared in the Secretariat in connection with meetings, seminars and technical cooperation projects and newsletters and working papers intended for distribution outside the Secretariat.

4. The revised attribution policy, which is in consonance with the new directions being taken in publications policy by a number of specialized agencies and programmes of the United Nations system, as well as the evolving practices in Member States, has several fundamental objectives: (a) to acknowledge original intellectual contributions in *the preparation of United Nations publications and reports*; (b) to facilitate a dialogue with the international academic and professional communities in order to advance United Nations objectives in relation to political, economic and social issues of global concern and thereby enhance the image of the United Nations; (c) to provide appropriate recognition of intellectual accomplishment for staff working in the Organization; (d) to assure current and potential staff members, known to be experts in their respective fields, that their professional work in the Organization would be recognized among their peers; (e) to increase staff responsibility in the creation of high-quality publications and reports; and (f) to enhance the sales potential of *United Nations publications*.

5. In the implementation of the revised policy and in an effort to decentralize and otherwise facilitate decisions relating to attribution of authorship, *the substantive author departments shall bear responsibility for approving the requests for attribution in individual cases*. They shall also decide what form such attribution will take. This might range from attribution to one or two authors or an organizational unit on the title-page, or a broader acknowledgement later in the front matter when the work in question is a collaborative effort. In consultation with the heads of other departments and offices responsible for design, editing, typesetting or translation, author departments would decide upon the form of acknowledgement for these services.

6. Attribution of authorship will *not* be considered in the following categories:

...

c) Public information material: brochures, pamphlets, press releases, flyers, catalogues and other materials designed primarily to inform the public about United Nations activities. For the

purpose of the present instruction, *public information material offered in publications may have attribution;*

...

E. Attribution to the United Nations and other specialized agencies

13. Where the United Nations and one or more of the specialized agencies ... are *jointly responsible* for the preparation of a publication, their names and emblems may appear on the cover and title-page as authors ...

Note on evidence

4. In her written closing submission, the applicant introduces a number of new facts and also contends that the testimony of all the respondent's witnesses sho liesses sho liesses sho li0.

6. For completeness, I should mention that I did not allow the applicant to call three witnesses (a Senior UNDP Economist, an Associate Professor at the Department of Economics at the New School, and a retired World Bank Economist) since the evidence she proposed to adduce from them did not appear to have any relevance to the issues in the case. Also, I did not allow the respondent to tender a witness statement from the Director of the UNSD for reasons of fairness, since he was not available to give evidence before the Tribunal, his evidence was in dispute and he could not be cross-examined by the applicant.

Facts

The preparation of the ECOWAS Poverty Profile

7. Work on the ECOWAS Poverty Profile appears to have been launched in late 2003, although some initial deliberations may have begun even before then. In her electronic performance appraisal system (e-PAS) record for 2004–2005 the applicant describes her own contribution to this part of the project as follows –

Like the poverty project, the ECOWAS Development Account project has been important and consequential. It was a pleasure to assist countries of the ECOWAS region individually on an ad-hoc basis as well as to provide backstopping advice to strengthen capacity in the area of poverty statistics on two occasions organized in the region: a workshop on Poverty Statistics in July 2004 and the Expert Group Meeting in a Regional publication on Poverty Statistics both held in Abuja – Nigeria in July 2004 and February 2005 respectively. The ECOWAS Secretariat has been very active and committed to carry out the Development Account project successfully, and thus working with them has been both fulfilling and rewarding professionally to me.

Her first reporting officer, and since April 2005, Chief of Statistical Services Branch, UNSD (the Services Chief) described her work by stating –

In the context of the Development Account project for the ECOWAS region, [the applicant].4(. fully,as)J17.3.muTc0 TwD.0007 Tofirs Tofddork bor the Eom

regional events, establishing thus a network of experts in the countries of the region. She has also established close professional relationships with the statistical leadership of the ECOWAS secretariat, which will facilitate the further implementation of the project activities.

8. In her 2005–2006 e-PAS the applicant described her work with ECOWAS during this period as –

The preparation of the first United Nations Handbook on Poverty Statistics, Methods and Policy Use, and of its regional companion The ECOWAS Poverty Profiles: A Statistical and Policy Review, has been a major challenge during this reporting period and I look forward to contributing further to such important work of the Division ...

Her first reporting officer, the Services Chief, described her input as –

For the Development Account Project in the ECOWAS region, [the applicant], provided the necessary leadership for the advancement of the regional publication on poverty statistics, by interacting closely with the senior management of the ECOWAS Secretariat and acting as their technical advisor in all matters related to the project. She was actively involved in the selection of three regional consultants (preparation of terms of reference, evaluation of papers, conducting interviews) who under her guidance produced the necessary input for publication. The fact that her mission to the region, where she met with the ECOWAS secretariat and the regional consultants, was fully funded by the ECOWAS secretariat is testimony to their appreciation of her particular combination of substantive and practical project management skills.

9. The applicant testified that the ECOWAS project was launched in November 2003, when the first Steering Committee meeting was held, organized and conducted by the applicant. The applicant organized a workshop in July 2004 and also designed documents concerning each of the ECOWAS countries that were eventually used in the ECOWAS Poverty Profile. When the Chief of the Statistical and Geographic Conferences Unit, UNSD (the Geographic Chief) got involved in the project (at an early stage), the applicant went through a difficult period and, in 2005, she suffered a major depressive episode attributed to overwork. From 1 April 2006 the applicant was transferred to a new section in UNSD. The applicant was on sick leave some days during July 2006 and did not work, but only had one certified leave day the

month before. The applicant was able to participate in a seminar held on 10 and 11 August 2006 at which the documents that had been prepared for the ECOWAS Poverty Profile were evaluated. Among these were drafts provided by three consultants, which the applicant had reviewed.

10. In his evidence, the Services Chief explained that the applicant and he worked together in 2004 on the initial design of the ECOWAS Poverty Profile, which was a component of an overall three-year ECOWAS project from 2004 to 2006 (assumedly this is what was referred to as the “Development Account Project” in the e-PAS reports). The applicant’s role had been, *inter alia*, to establish links with relevant governments. An outline of the project was discussed in early 2005, but further work on the Profile was delayed during the rest of the year by other tasks in the Statistical Services Branch. From 1 April 2006 he was no longer involved in the ECOWAS project.

11. The Director of Statistics in ECOWAS (the ECOWAS Director) in his testimony confirmed that the applicant had contributed to the project as described by the applicant and the Services Chief in her e-PAS reports. He added that the applicant was involved in the preliminary work for the ECOWAS Poverty Profile and she represented UNSD in setting up the framework for the project. The applicant was also fundamental in promoting the idea of making the publication and for drafting an initial outline. He recalled that the applicant had participated in all meetings relating to the adoption of the framework for the Profile and in other expert meetings in July 2004 and February 2005.

12. In April/May 2006, according to both the Services Chief and the Chief of Demographic and Social Statistics Branch (the Demographic Chief), the applicant was transferred to the Demographic and Social Statistics Branch, UNSD. The Demographic Chief then became her first reporting officer and responsible for the ECOWAS Poverty Profile. The actual preparation of the ECOWAS Poverty Profile did not begin before the approval of the terms of reference by the ECOWAS Commission in January 2006, and at the time of the applicant’s transfer no drafting of

statistics expert, was out of the office most of June 2006 and on medical leave 28 June to 27 July 2006. To speed up the work, a seminar was held on 10 and 11 August 2006 at which the applicant participated even though she was on annual leave. At this seminar, the consultants' drafts were reviewed and it was decided that more needed to be done. The project had counted on the applicant, but progress was very slow. From 23 August the applicant went on extended medical leave, but just before that the Geographic Chief had communicated with her concerning some form of a draft or outline document, which had been put together by the UNSD staff for the fourth Steering Committee meeting. At this meeting this document was reviewed. It was decided to finish it as soon as possible, and give ECOWAS the main responsibility for the project. The applicant was copied in some email correspondence from 22 August and onwards, but the Geographic Chief did not receive anything back from the applicant. When the consultant took over the project it became apparent that not all the work of the consultants was satisfactory and the entire Profile had to be substantially restructured.

16. According to both the ECOWAS Director and the Demographic Chief, the applicant did not participate in the actual compiling of data for or the drafting of the ECOWAS Poverty Profile.

Attribution in the ECOWAS Poverty Profile

17. In November 2007 the ECOWAS Poverty Profile was published by the ECOWAS Secretariat. The publication's preface is jointly signed by the President of the ECOWAS Commission and the Director of UNSD and includes the following attributions, not mentioning either the applicant or the Services Chief –

The first draft of the country profiles was prepared by [three names] and the final draft of the entire report, including the Overview, was prepared by [name] – all working as consultants to UNSD. Members of the UNSD project team [four names, including those of the Geographic and the Demographic Chiefs] provided invaluable comments and contributions as did ECOWAS Commission members [the name of the ECOWAS Director] and [name].

18. Concerning the selection of names, the ECOWAS Director explained in his evidence that the initial drafts of the ECOWAS Poverty Profile included more names, including that of the applicant, which had been inserted on the initiative of UNSD. However, when the ECOWAS Commission President saw the third draft of the Profile, he had said that mentioning so many was confusing. ECOWAS, in accordance with the view of the President, therefore decided that only those who had contributed to the implementation of the project should be included and not those who had only been involved in the initial preparatory work. Accordingly, ECOWAS took out the name of the applicant. It was not suggested that this work was not important but simply that it was necessary to find a dividing line that conformed with the President's direction.

19. The Geographic Chief explained that he had assisted ECOWAS in preparing the preface and had proposed a long list of names, including that of the applicant. He said that ECOWAS' decision that only those who actually had worked on the publication should be included and that, in ECOWAS' view, this did not start until May 2006, involved the exclusion of the applicant and also, as it happened, the Services Chief. According to the Geographic Chief, no one in UNSD had suggested that the applicant should not be acknowledged.

20. In essence, the Demographic Chief confirmed much of the evidence of the ECOWAS Director and the Geographic Chief.

21. On the front page of the publication the following is noted –

ECOWAS

Poverty Profile

Prepared by the Economic Community of West African States
Commission (ECOWAS) and the United Nations Statistics Division,
Department of Economics and Social Affairs

In addition, the front page shows the emblem of the ECOWAS but not that of the UN, and, as part of the background illustration of the page, "ECOWAS" is written with large letters on the bottom.

22. On the second page of the publication is noted –

Copyright @ Economic Community of West African States
Commission

...

Printed by the United Nations New York

Applicant's submissions

23. The applicant was not represented by counsel when drafting her closing statement and her submission is both unstructured and confusing. I have already dealt with her submission on evidence, and below I outline the remaining contentions as I understand them in substance to be.

24. The issue of non-attribution is inextricably bound up, both in substantive terms and in terms of the chronology of events, with the other issues that arise in this case, and in the interest of justice the relevant facts should be determined together. These offenses exacerbated in 2005 when the UNSD Director granted a D-1 post to the Services Chief, and he failed to keep his many promises to the applicant concerning promoting her. This resulted in the applicant being reprimanded each time she raised an issue of unfairness with regard to her work or the credit she was given for it, including that concerning the ECOWAS Poverty Profile.

25. The ECOWAS Poverty Profile was a joint UN and ECOWAS publication, which was prepared as one of the outputs of the United Nations Development Account Statistic. UNSD defined and decided on the criteria upon which attributions were made, and the suggestion that it was ECOWAS' decision is false (the primary case). ECOWAS' role and actions concerning the non-attribution, if any, and, even if proven true, should have no effect on her contractual rights and obligations so far as the UN is concerned. The Profile falls under the purview of a wide array of UN policy interests, indeed poverty statistics in West Africa is squarely within the stated objectives of the Millennium Development Goals of the United Nations. The United Nations lent the expertise of the applicant, who has been the sole expert in Poverty

Statistics in the Division for the past fifteen years, as a technical advisor to ECOWAS.

26. The applicant played a central role in the ECOWAS Poverty Profile which would not have been in existence without the applicant's substantial intellectual contribution to it. This was confirmed by the respondent's witnesses and started with her proposal for a Development Account project for the ECOWAS Poverty Profile. The publication of the Profile makes extensive references (from preface to conclusion) to various outputs of applicant's assignments as also reported in her e-PAS reports for the period, and she reviewed the papers prepared by the consultants. The respondent has not adduced any evidence of the specific contributions made by the other five UNSD workers, who were accredited in the preface. Not attributing her for her contribution was therefore unfair and prejudicial to her. The applicant should not be penalized for only contributing to the second phase of the project, and the distinction between input provided in the initial and later stages was in itself irrational. To avoid making an attribution to the applicant, the UNSD Director reassigned her to the Social Statistics Section and hired a consultant to finish her work.

27. The Applicant's medical condition has been cited as the ultimate reason for the non-attribution. Section 3.7 of ST/AI/2005/3 provides that –

Periods of sick leave, whether on full or half pay, shall not affect the accrual of service credits towards salary increment, home leave, termination indemnity and repatriation grant.

UNSD forged her attendance records not only for the period June–July 2006 but also for her attendance at the seminar held on 10 August 2006. In accordance with ST/AI/2005/3, the applicant duly reported her medical leave, within “the tenth working day following the initial absence”, for the seven days when she was unable to perform her duties by reason of illness, namely 27 June, from 11 to 19 July 2006.

Respondent's submissions

28. The claim concerning attribution is not receivable since the decision in question was not taken by the respondent but by ECOWAS. It is not an “administrative decision” that is subject to appeal under Chapter XI of the staff rules and art 2.1 of the Statute: *Planas* UNDT/2009/086. Furthermore, the publication of the ECOWAS Poverty Profile is not a UN publication since ECOWAS holds the copyright to it and it does not bear the emblem of the UN. Finally, although it is accepted that the applicant’s contribution in the initial phase of the publication process was important, in fact she was not present during the critical drafting and editing stage of the process.

Considerations

29. The issue of attribution is capable of being evaluated separately from the other issues of the case. Although the applicant may see this issue as part of a general pattern of mistreatment of her rights as a UN staff member, the facts and law relating to it can be easily distinguished and evaluated. Accordingly, I see no problem in dealing with them in a separate judgment.

30. The evidence that it was ECOWAS and not UNSD that took the decision not to attribute the applicant for her contributions to the ECOWAS Poverty Profile is all one way and is overwhelming. This decision is therefore not a decision in respect of which the respondent, ie, the Secretary-General as the Chief Administrative Office of the United Nations, has any responsibility. In *Wasserstrom* Order 19 (NY/2010) I described the character of an administrative decision within the meaning of art 2.1 of the Tribunal’s Statute which can be the subject of an appeal –

[28] The question whether the correctness or propriety of a decision is within the jurisdiction of the Tribunal to determine is an essentially simple one: does the decision of the Administration breach a contractual right of the staff member. The words “administrative” and “decision” are words in ordinary parlance. It is unnecessary (and therefore inappropriate) to understand them in any special or technical

sense. In ordinary language “administrative” is an adjective applying to some act done in the course of managing the affairs of an entity and a “decision” is a determination or conclusion. In the present context, therefore, an “administrative decision” is a determination or conclusion made in the course of managing the affairs of the UN. By virtue of the interaction between the rules relating to review of administrative decisions and management evaluation on the one hand and, on the other, the ability to apply to the Tribunal for a decision, the decision must also be one that is capable of being corrected by the Secretary-General pursuant to his or her powers under art 97 of the Charter as “chief administrative officer” of the Organization.

Even if the ultimate decision to exclude the applicant from attribution was that of ECOWAS, it could, nevertheless, be held that the administrative decision in question was that UNSD decided (for example) to accept the decision of ECOWAS in respect of the applicant, contrary to its obligations to her. Such a (secondary) case would be in my view so closely related to the complaint that the applicant did not receive attribution contrary to (her claimed interpretation of) the relevant administrative instruction and the Organization’s contractual responsibility towards her as a staff member as to be encompassed by the substance of her application, even in its present form. To succeed with this case, the preponderance of evidence would have to justify the conclusion that the approach of the relevant officials in UNSD to ECOWAS’ decision was so unreasonable as to amount to demonstrating bad faith.

31. In this regard, it is worth noting that both the ECOWAS President as well as the UNSD Director signed the preface in which the acknowledgements were listed, suggesting that the latter approved the exclusion of attribution of the applicant or, at least, the reasonableness of the criterion applied to that exclusion. On the other hand UNSD initially inserted the applicant’s name.

32. Furthermore, the evidence shows that the copyright was intended to be held by ECOWAS rather than the UN. In my view, the preponderance of the evidence clearly shows that the UN, although it contributed material to the publication, was not asserting or claiming any copyright in respect of it. It was not published by the UN and thus did not fall within sec 3 or sec 4 of ST/AI/189/Add.6/Rev.4. Nor, if the

document came within part E, sec 13 of the Administrative Instruction – as a joint publication with ECOWAS – does this assist the applicant, since that provision does not deal with attribution other than to the UN or other relevant agency, hence not to someone in the applicant's position.

33. In my view it was not unreasonable for UNSD to accept the legitimacy of the decision made by ECOWAS as to attribution of any contribution. The criterion specified was reasonably directed to the matter in issue, namely to acknowledge those who had authorship rather than those who provided initial conceptual or organizational input and that the judgment about this matter was plainly a matter of fact and degree. I accept the evidence of the Services, Geographic and Demographic Chiefs and, for that matter of the ECOWAS Director as to the role of the applicant or, at least, as to the reasonable basis for their view about it, even if (as it may have been) it was mistaken in some detail or other. There was an issue as to the precise extent of the applicant's absence on sick leave, it being contended by her that these absences were not quite so substantial as stated by the respondent's witnesses. The possibility of their being mistaken to some degree after the effluxion of time is real but, as it seems to me, this is not so significant as to lead me not to accept the substance of their evidence concerning the extent of the contribution made by the applicant to the creation of the document itself, which is an evaluation of a different kind. Insofar as the applicant's evidence is inconsistent with them on this question, I found that of the Demographic and Geographic Chiefs more reliable. I conclude that the Geographic Chief and the UNSD Director acted conscientiously in forming the opinion that it was reasonable to accept the right of ECOWAS to impose its criterion for attribution and that, on the facts as he understood them to be, the applicant did not satisfy it. There is no evidence of any cogency that, in so acting, he was influenced by any irrelevant consideration, let alone was personally biased against the applicant.

34. At all events, it is apparent that the decision about attribution was made by ECOWAS at the highest level and the evidence would not permit the conclusion that UNSD was in a position to change it. Accordingly, the applicant could, at most,

obtain an award only of nominal compensation even if she succeeded in what might be called her secondary case. However, I am persuaded that UNDS acted reasonably in respect of the criterion imposed by ECOWAS and there was no breach of any contractual obligation owed to the applicant. As to her primary case, the decision that the applicant would receive no attribution was made by ECOWAS and not, either alone or jointly, by the Secretary-General or anyone under his authority or the authority of the UN and, therefore, does not fall within the purview of the Tribunal as prescribed by art 2.1 of its Statute.

Conclusion

35. The application on the issue of non-attribution is dismissed.

(Signed)

Judge Adams

Dated this 14th day of May 2010

Entered in the Register on this 14th day of May 2010

(Signed)

Hafida Lahiouel, Registrar, New York