
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2013/002/R1

Judgment
No.: UNDT/2016/211

Date: 1 December 2016

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar:

Introduction

1. The Applicant was a staff member of the United Nations Economic and Social Commission for Western Asia (ESCWA) from 24 August 2002 until 24 August 2012.

2. On 29 March 2010, he filed an application with the Geneva Registry of the United Nations Dispute Tribunal (UNDT), which was assigned Case No. UNDT/GVA/2010/079.

3. Following the filing of that application, the Applicant engaged in settlement discussions with the Administration coordinated by office. On 24 April 2010, the Applicant entered into a Settlement Agreement with the Organization.

4. On 27 April 2010, he applied to the UNDT in Geneva for a withdrawal of Case No. UNDT/GVA/2010/079 which he had earlier filed as it had been satisfactorily resolved through mediation. The said case was struck out on 3 May 2010 in Judgment No. UNDT/2010/079.

5. Nearly three years later and specifically on 7 January 2013, the Applicant filed another application alleging that he had signed the Settlement Agreement under duress, that ESCWA had rejected his application for a position of Director, Economic Development and ccc(E821iss/

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implementation of the agreement, his failure to raise the allegations of duress until well after two years after the mediation including his failure to proffer any evidence in support of his allegation could only lead to the conclusion that the allegation was devoid of any merit.

8. The Applicant subsequently appealed that judgment and on 26 February 2015, the United Nations Appeals Tribunal (UNAT) allowed the appeal² in part and remanded the case to the Dispute Tribunal to make a decision on the

9. The Tribunal commenced a re-hearing of the Application on 2 August 2016.

10. The Tribunal adjourned the hearing of the matter to 27 September 2016 and ordered the Applicant to seek the assistance of the Office of Staff Legal Assistance (OSLA) to file amended pleadings and witness statements by 12 August 2016.³

11. On 5 September 2016, the Applicant,

in ESCWA. The Applicant had applied for a post in the Economic Development and Globalization Division, D-1 (11-ECO-ESCWA-19813-R-BEIRUT) and was not selected.

b. The Settlement Agreement stipulated that he could encumber any position in the United Nations including ESCWA. The idea that he was welcome to apply elsewhere in the United Nations but not to ESCWA was neither communicated to him verbally nor in writing.

c. He was personally disliked, targeted and discriminated against by the former Under-Secretary-General and by the management of ESCWA because of his human rights-related report writing, the fact that he was a staff representative and what he knew about them. The interpretation of the Settlement Agreement by ESCWA was biased.

d. In his witness statement Dr. Juraj Riecan, who served on the hiring panel, indicated that the Applicant was not screened and could not be shortlisted. His name was removed from the list of shortlisted candidates by the ESCWA Administration.

e. The personnel file in ESCWA contained adverse material and reprimand memoranda citing him for insubordination, planning a revolt against the United Nations, violating the code of ethics and behaviour, gross negligence, disrespect for the Organization and mockery of and disrespect for his supervisor and top United Nations management. The Settlement Agreement was self-contradictory therefore in stipulating that he could be rehired at ESCWA or anywhere else within or outside the United Nations.

f. The Settlement Agreement was reached in good faith to end and compensate him for the harassment and discrimination to which he was subjected. It ought to have included a clause to remove the adverse material from his personnel file. The reprimands and accusations in the file were part of the harassment that he endured and for which he was compensated when he relinquished his claims against the Respondent.

g. The decision to not consider him at all for the posts to which he had applied or for any future posts at ESCWA because of the adverse material on his personnel file is a violation of the Charter of the United Nations which demand that recruitment be free of bias or discrimination.

h. The Tribunal should order the Administration to remove adverse material from his personnel file as failure to do so is a breach of the Settlement Agreement not to provide negative information to prospective employers.

The case

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e. The Applicant claim that he was not considered for the position in the Economic Development and Globalization Division is incorrect. His job application was considered together with all other job applicants. Due to the Settlement Agreement, his job application was not considered beyond the initial review and the Applicant did not make the shortlist.

f. The Applicant that the adverse information on his Official Status File (OSF) will negatively affect his chances for employment in ESCWA or anywhere in the United Nations is untrue. All OSFs are treated confidentially and hiring managers do not have access to OSFs for purposes of recruitment nor is a job reviewed as

g. Settlement Agreement was reached to compensate him for harassment and discrimination is incorrect. The purpose of the Settlement Agreement was to reach an amicable solution between the Applicant and the Organization, thereby seeking to

have been shortlisted and interviewed for the new position at ESCWA to which he applied in May 2011. His interpretation of the Settlement Agreement also includes that all adverse material in his OSF were to be removed. The facts that he was not invited to interview for the position and that adverse materials were not removed from his OSF form the basis of his claim of continued harassment and discrimination.

24. The said Article 7.4 provides:

Where an application is filed to enforce the implementation of an agreement reached through mediation, the application shall be receivable if filed within 90 calendar days of the last day for implementation as specified in the mediation agreement or, when the mediation agreement is silent on the matter, after 30 calendar days from the date of the signing of the agreement.

Did the Applicant bring this action within the applicable time limits? Is this claim concerning the terms of the Settlement Agreement receivable in the light of Article 7.4?

25. The said art. 7.4 requires that any application seeking to enforce the terms of a settlement agreement must be filed within 90 calendar days

consideration of this issue will also require an interpretation of the Settlement Agreement between the parties.

28. The Applicant had submitted that according to statement, he (Applicant) was not screened and was removed from the shortlist for the advertised D-1 level post by the Administration. The Respondent in reply submitted that t application was considered together with all other job applicants and that the Applicant did not make the shortlist due to the terms of the said Settlement Agreement.

29. Further, ST/AI/292 (Filing of adverse materials in personnel records), provides clear guidelines on the filing of adverse materials in OSF and the Applicant has legal recourse on having such materials expunged from his records. Insofar as this Application concerns what uses the adverse materials on the
OSF

Entered in the Register on this 1st day of December 2016

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi