



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2010/14/
UNAT/1610
Judgment No.: UNDT/2011/017
Date: 20 January 2011
Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Jean-Pelé Fomété

HARDING

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Applicant appeared in person

Counsel for Respondent:
Philippe Sacher, UNHCR

BACKGROUND AND FACTS

1. At the time of the administrative decision to summarily dismiss her giving rise to the present application before the Tribunal, the Applicant, a national of Sierra Leone, was employed as a Programme Assistant on a fixed-term contract at the GL-6 level with the Office of the United Nations High Commissioner for Refugees (UNHCR) in Freetown, Sierra Leone. She had served with the said Office for more than fourteen years having first been employed in April 1991 as a Secretary at the GL-4/1 level. From 1 December 2004 through 31 March 2005, the Applicant went on mission to Harper, Liberia where she served on a special post allowance (SPA) at the P-2 level.

2. UNHCR on 21 June 1999 issued a memorandum to all its heads of offices in the field following the discovery of fraudulent Medical Insurance Plan (MIP) submissions. The said memorandum emphasized that the submission of fraudulent Medical Insurance Plan (MIP) claims for reimbursement would render errant staff members liable to summary dismissal. This memorandum was reissued on 24 January 2003 and 10 May 2004 following the continued submission of fraudulent claims.

3. In the months of May and June 2003, the heads of the UNHCR Branch Office in Freetown and the Sub-Office in Kenema were alerted by their respective Administrative Officers to a number of suspicious MIP claims. A consequent review of these claims by the United Nations Volunteer (UNV) Health Coordinator in July 2003 led to the conclusion by the said Health Coordinator that most of the claims were fraudulent. The findings of the Health Coordinator were submitted to the Office of the UNHCR Inspector General (IGO) in late August 2003. Based on these reports, UNHCR launched a preliminary investigation in its offices in Freetown and Kenema to review the MIP claims by interviewing staff members and their dependants. The preliminary investigation was conducted by the UNV Health Coordinator and the Senior Regional Health Coordinator from the UNHCR Branch Office in Freetown. This investigation took place in December 2003.

4. The IGO also conducted interviews of staff suspected of involvement in the submission of fraudulent claims alongside the preliminary investigation and interviewed the Applicant on 10 and 17 December 2003. On 27 January 2004, the IGO issued a general preliminary investigation report on all MIP claims. On 5 February 2004, the IGO issued the preliminary investigation report (INV/03/097/F9) on the Applicant. The report raised allegations that the Applicant had submitted forged UNHCR MIP claims for undue payments and was forwarded to her on 7 April 2004. The Applicant's reply to the allegations was filed on 26 May 2004.

5. On 11 April 2005, the Applicant was charged with serious misconduct for submitting fraudulent medical bills for reimbursement under the Medical Insurance Plan. Thereafter, on 8 June 2005, the Applicant was advised of the decision to summarily dismiss her for serious misconduct.

6. On 1 August 2005, the Applicant requested the now defunct Joint Disciplinary Committee (JDC) to review the decision to summarily dismiss her. In its consideration of the case, the JDC Panel unanimously concluded in its report dated 13 July 2007 that the Respondent's decision was flawed by factual errors and violations of the Applicant's due process rights. Following from its finding, the JDC recommended that the decision of summary dismissal be rescinded and that the Applicant be fully reinstated in service in addition to the payment of six months base salary as compensation for breach of her due process rights.

7. On 17 October 2007, the High Commissioner for Refugees advised the Applicant that he accepted the findings of the JDC but offered her compensation in the sum of two years' base salary as sufficient and adequate compensation in lieu of reinstatement, in addition to the six months base salary as compensation for the breach of her due process rights as decided by the JDC. That amount was subsequently paid to the Applicant.

8. The Applicant filed an appeal against the decision of 17 October 2007 with the former United Nations Administrative Tribunal on 2 July 2008. The Respondent's

Reply to the Appeal was filed on 11 December 2008, to which the Applicant filed her written Observations on 24 March 2009 after being granted an extension of time to file her Observations.

9. On 1 January 2010, this matter was transferred to the Nairobi Registry of the United Nations Dispute Tribunal in accordance with the provisions of United Nations General Assembly Resolution 63/253 and section 2 of the Secretary-General's Bulletin on Transitional Measures Related to the Introduction of the New System of Administration of Justice ST/SGB/2009/11.

10. Case management orders were issued by the presiding judge on 9 August 2010 and a notice was issued to the parties to attend a case management hearing on 29 September 2010. The Applicant and Respondent filed their submissions to the Tribunal. On 11 October 2010, an additional statement was filed by the Applicant in respect of her request that the Tribunal order the payment of a Special Post Allowance (SPA) regarding her service on mission in Liberia from 1 December 2004 to 31 March 2005. By means of a response filed on 19 November 2010, the Respondent submitted that further investigations had yielded that indeed the SPA had not been paid due to an oversight and that the payment would be made to the Applicant without any avoidable delay.

HEARING AND CONCESSION BY THE RESPONDENT

11. The Tribunal heard the case and submissions of the parties on 1 December 2010. The Respondent having conceded that his summary dismissal of the Applicant was a flawed decision, the only issue before the Tribunal was the matter of compensation and other entitlements due to the Applicant.

RELIEFS SOUGHT BY THE APPLICANT

12. That she be reinstated to her post, failing which she should be offered an international post by virtue of having already qualified to be placed on the UNHCR international posting roster.

13. In the event that reinstatement or an international posting proves unfeasible, that she be paid compensation from the date of her dismissal to her expected date of retirement, which amounts to 21 years' base salary. The two years salary compensation paid to her was too paltry a sum.

14. That the Tribunal consider the obstruction of her probable career development as an international civil servant to be a relevant factor in computing the amount of compensation to be paid to her.

15. That the Tribunal set an amount of damages as recompense for the emotional stress, suffering, humiliation and shame that the Applicant and her family have been subjected to as a result of her wrongful dismissal.

THE RESPONDENT'S OFFER TO THE APPLICANT

16. A sum of money equivalent to two years net base salary had already been paid to the Applicant as compensation in lieu of her reinstatement which was recommended by the JDC. The Applicant is not entitled to an offer of an international position in lieu of reinstatement.

17. A sum of money equivalent to six months salary had already been paid to the Applicant as compensation for breach of her due process rights.

18. The Respondent is ready and willing to process and pay without delay the Special Post Allowance at the P2 level in respect of the period the Applicant was on mission to Liberia inclusive of interest at the US prime rate currently applicable.

Having considered the case and submissions made in writing and at the oral proceedings before her, the Tribunal **GIVES JUDGMENT AND ORDERS AS FOLLOWS:**

- i. The summary dismissal of the Applicant is rescinded. It is accordingly declared null and void and set aside.
- ii. The payment of a sum equivalent to two years net base salary to the Applicant in the circumstances is sufficient compensation for non-reinstatement. The Tribunal rejects the relief sought for an international posting in lieu of reinstatement or the payment of the equivalent of twenty-one years salary.
- iii. The payment of a sum equivalent to six months salary to the Applicant is sufficient compensation for a breach of her due process rights.
- iv. The Special Post Allowance (SPA) to which the Applicant is entitled on account of her four-month mission to Liberia from 1 December 2004 – 31 March 2005 shall be paid her with interest at the US Prime Rate applicable on the date this judgment was rendered orally on 1 December 2010.
- v. The Respondent shall additionally pay the equivalent of six months salary to the Applicant as compensation for emotional distress, shame and humiliation, which it is found, she suffered as a result of her wrongful summary dismissal on the erroneous ground of fraudulent medical claims.
- vi. The Applicant's summary dismissal having been rescinded, nullified and set aside, the Tribunal finds that the Applicant was deemed to still be in the employment of the Respondent up until 1 December 2010 on which date this judgment was orally delivered. The Respondent shall pay all salaries and entitlements due the Applicant under the terms of her employment as a Programme Assistant from 8 June 2005 when she was

wrongfully summarily dismissed to 1 December 2010 with interest at the said US Prime Rate.



Judge Izuako

Dated this 20th day of January 2011

Entered in the Register on this 20th day of January 2011



Jean-Pelé Fomété, Registrar, UNDT, Nairobi