UNITED NATIONS DISPUTE TRIBUNAL

Case No.:
Judgment No.:

UNDT/NY/2022/033

Date:

UNDT/2024/032 10 May 2024

Original:

English

Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

AGUILAR VALLE

v.

SECRETARY-GENERAL OF THE UNITED NATIONS

JUDGMENT

ON RELIEF

Counsel for Applicant:

George G. Irving

Counsel for Respondent:

Marcos Zunino, DAS/ALD/OHR, UN Secretariat

Case No. UNDT/NY/2022/033

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Introduction

- 1. On 26 February 2024, the Tribunal issued Judgment No. UNDT/2024/007 on liability in which the application was granted on liability and whereby the contested decision, namely the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity, was found unlawful. It was also uvcyf y cvc y tkwgp Qtf gt qp y g r ct kguøhwty gt uwdo kssions on remedies and costs would follow.
- 2. By Order No. 023 (NY/2024) dated 28 February 2024, the Tribunal ordered the parties to file their closing statements on remedies and costs, including certain additional documentation. The parties duly complied with Order No. 023 (NY/2024).

Consideration

The legal framework for relief before the Dispute Tribunal

- 3. The Statute of the Dispute Tribunal provides in its art. 10.5 an exhaustive list of remedies, which the Tribunal may award:
 - 5. As part of its judgement, the Dispute Tribunal may only order one or both of the following:
 - (a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph;
 - (b) Compensation for harm, supported by evidence, which shall pqto cm{ pqvgzeggf vj g gs wkxqngpvqh . . .

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appointment is not to be renewed is to receive a pre-notification concerning the non-extension, at least 30 days before its expiry.

- 15. The Respondent has not argued or submitted any documentation demonstrating that the Applicant should have been advised that his fixed-term appointment was not to be extended. Considering that the Applicant was separated only 18 days before the expiry of this fixed-term appointment, the Tribunal therefore finds it likely that a non-renewal of the Crrnecpyan hzgf-term appointment had not been contemplated; rather, his appointment was planned to be extended. In this regard, it is further noted that nothing in the case file suggests that any possible reason existed for not renewing the Crrnecpyan appointment, such as, for instance, the absolishment of his post or him having serious and documented performance issues.
- 16. Accordingly, the Tribunal finds that j cf kv pqv dggp hqt y g Crrnecpyu separation on 4 April 2022, his fixed-term appointment would have been renewed for another two years on 23 April 2022. In this hypothetical scenario, he would then have been granted another two-year fixed-term appointment expiring on 22 April 2024. Thereafter, the Tribunal finds that it would too be speculative to assume that it would be extended any further.

Offsetting alternative income and mitigation of income loss

17. Any actual income, which an applicant has received during the compensation period for loss of income in accordance ctv. 32.7 qh yi g F kur wg Vtkdwpcnu Uccwwg, shall be offset in the compensation amount as, in the hypothetical scenario that the applicant had not lost her/his appointment at stake, s/he would not have obtained this other income (see also the Appeals Tribunal in *Belkhabbaz* 2018-UNAT-895, para. 38). In line herewith, the Appeals Tribunal has also held that an applicant has a duty to mitigate her/his losses in terms of the in the hypot1 0 0 U912 0o

and an invoice from another medical professional dated 29 April 2022 for four sessions of individual psychotherapy on 7, 14, 21 and 28 April 2022.

- 27. The Respondent contends that the Applicant has not provided õany evidenceö to support his claim and refers to *Rehman* 2018-UNAT-882 cpf uwwgu yj cvõ]hqt this reason cmpg, yj g Crrnkecpyzu emko hqt eqo r gpucykqp hqt o qtcn j cto uwcpf u vq dg rejectedö. Kp cffkkqp, kp yj g Crrnkecpyzu elosing statement, j g õbelatedly seeks to expand his request for moral harm ±o his personal and professional reputation, welldgkpi cpf ± ki pkscuzō, which should be õrejected as beyond the scope of the Applicationö.
- 28. The Respondent also argues that ȳ g kpxqkeg õallegedly for four psychotherapy sessions in April 2022 and [the medical] report from a psychologist which mentions 15 sessions of psychotherapy for stress related to the unexpected termination of his employmentö ku õbelated evidenceö cpf õkpuwhhkekgpv vq uwduvcpvkcvg ȳ g Crrnkecpvxu claim for moral harmö. Both documents õlack enough information concerning the Crrnkecpvxu eqpf kkqp cpf ku pgz wu y kȳ ȳ g eqpvguvgf f gekukqp vq f kuej cti g j ku dwtf gp of establishing that the contested decision was the cause of his harmö, cpf õthey state that the stress is *related* (relacionados) to the termination of his employment, rather than *caused* by it as requiredö. The medical report õis dated 28 February 2024 and was ergctn(kuwgf vq hqt ȳ g r wtr qug qht gur qpf kpi vq ȳ g Vtkdwpcnxu tgs wguvhqt gxkf gpegö, cpf õtoo far removed in time from the contested decision (issued on 1 April 2022) to dg r tqdcvkxg qh ȳ g ecwucn pgzwu dgwy ggp ȳ g Crrnkecpvxu cmgi gf u{o r vqo u cpf ȳ g contested decisionö. The invoice is õa financial document and not a medical certificate and lacks information to establish the harm and the nexusö.
- 29. The Tribunal accepts the medical report and the invoice submitted by the Applicant as genuine and proper evidence of the stress and anxiety he felt after the second harshest disciplinary sanction under staff rule 10.2 imposed on him, namely separation from service with compensation *in lieu* of notice and without termination indemnity, for alleged sexual harassment. The Tribunal notes that the Respondent has

33. At the same time, at least to some extent, the Applicant also contributed to the situation. In Judgment No. UNDT/2024/007, para. 53(d), the Tribunal found that the Applicant had

37. The Respondent submits that this request was not stated in the application and that õy g Vtkdwpcn ecppqv i tcpv ý g Crrnecpv tgo gf kgu j g f kf pqv tgs wguv kp j ku Application (*ultra petita*)ö. Kp *Fosse* 2020-UNAT-1008, the Appeals Tribunal õheld that the Dispute Tribunal was not competent to award compensation where no request for such compensation had been made in the applicationö. Expanding õthe scope of relief requested in the application, ÷would prejudice due process of law, affecting the ability of the opposing party to effectively answer his petition that failed to explicitly refer to the specific kind of damage or request adequate