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JUDGE SOPHIA ADINYIRA , Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal filed by Mr. Victor Zhouk against Judgment No. UNDT /2011/102 rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 17 June 2011 in the case of Zhouk v. Secretary-General of the United Nations . On 1 August 2011, Mr. Zhouk appealed. The Secretary-General filed his answer on 23 September 2011.

Synopsis

2. The Dispute Tribunal has an unquestioned discretion and authority to order and quantify compensation under Article 10(5) of its Statute for violation of the legal rights of a staff member as provided under the Staff Regulations, Rules, and administrative issuances.

3. However, not every violation will necessarily lead to an award of compensation. Compensation may only be awarded if it has been established that the staff member actually suffered damages. This Court will not approve the award of compensation when absolutely no harm has been suffered. Moral damages may not be awarded without specific evidence supporting the award.¹

4. In the instant appeal, even though the Dispute Tribunal found that a breach of Mr. Zhouk's procedural rights under ST/AI/1998/9 occurred, Mr. Zhouk did not provide evidence of any harm that he had suffered and consequently an order for compensation was not warranted.

5. The appeal is dismissed. The UNDT Judgment is affirmed.

Facts and Procedure

6. The UNDT set out the facts that were agreed upon by both parties in a Joint Statement in paragraphs 13 to 36 of its Judgment as follows:

¹ Antaki v. Secretary-General of the United Nations , Judgment No. 2010-UNAT-095; James v. Secretary-General of the United Nations , Judgment No. 2010-UNAT-009; Bertucci v. Secretary-General of the United Nations , Judgment No. 2011-UNAT-114.

13. On 12 August 1989, the Applicant began his service with the Organization as an Associate Programmer/Analyst at the P-2 level under a 100-series three-year fixed-term appointment. As of 1 October 1991, the Applicant's fixed-term appointment was converted to a permanent appointment. The Applicant successfully applied for the SCU Post, to which he was promoted on 24 February 1997.

14. On 1 February 2000, Mr. James Brooks, the Chief of SCU, requested the reclassification of the SCU Post on the basis that the demands and responsibilities of functions had "steadily grown in scope and complexity in proportion to the demands placed on budgetary systems support for meeting the requirements of both Member States and offices within the Secretariat".

15. On 23 February 2000, Ms. Marianne Brzak-Metzler, the Chief of the Compensation and Classification Policy Unit ("CCPU"), in the Office of Human Resources Management ("OHRM"), responded that "the post remains classifiable under the title of Systems Analyst at P-3 level".

16. On 30 March 2000, Mr. Brooks updated the job description for the SCU Post and submitted another request for reclassification.

17. On 26 April 2000, Ms. Brzak-Metzler informed Mr. Brooks that her office had again reviewed the revised job description.

22. By memorandum dated 30 January 2006, the Applicant's supervisor at the time, Ms. Thuy Basch, Chief of the SCU, sent a memorandum entitled "Revision of Job Description" to Ms. Van Buerle. This memorandum included a recommendation that the

36. By letter dated 11 September 2008, the Applicant was informed that the Secretary-General agreed with the findings and conclusions of the JAB and had decided not to take any further action in this matter.

7. In Judgment No. UNDT/2011/102, the UNDT found that the Respondent had breached Mr. Zhouk's procedural rights under ST/AI/1998/9, but that an order of compensation was not warranted as Mr. Zhouk had failed to provide evidence of any harm that he had suffered.

Submissions

Mr. Zhouk's Appeal

8. Mr. Zhouk submits that the UNDT, having determined that his rights were violated, erred in not ordering an appropriate remedy.

9. Mr. Zhouk submits that had the Administration taken appropriate action he would have most probably been appointed to the P-4 level. Consequently, the Administration's lack of action resulted in direct professional and financial damages. Mr. Zhouk recalls the holding of the former Administrative Tribunal that an appellant has "no obligation to show any specific damage in connection with the material consequences of the formal violation of [his] rights, since the violation in itself already constitutes sufficient damage to entail the Administration's responsibility and to constitute a basis for compensat[ion]".²

10. Mr. Zhouk submits that the five-year delay between the 2006 administrative decision and the 2011 Judgment resulted in extensive moral injury as well as lost opportunities. Mr. Zhouk cites the judgments of the former Administrative Tribunal and the Dispute Tribunal in support of his claim for compensation

Secretary-General's Answer

12. The Secretary-General submits that while the UNDT determined that the Administration had breached Mr. Zhouk's due process rights by relying on an outdated job description, it was nevertheless correct in concluding that this error did not warrant an award of compensation. Indeed, the Secretary-General submits that the UNDT's findings are fully consistent with the jurisprudence of the Appeals Tribunal in *Wu* and *Antaki*, which held that "not every violation of due process rights will necessarily lead to an award of compensation"³

13. The Secretary-General notes that Mr. Zhouk cannot refer to the principle of equal pay for equal work expressed by the UNDT in *Chen*⁴ at this stage of the litigation as this argument was not presented to the UNDT even though it was or could have been known to the parties at that stage of the proceedings.

14. The Secretary-General contends that the issues identified by Mr. Zhouk do not establish that the UNDT erred in determining that no compensation should be awarded for the violation related to the post classification. The Secretary-General submits that Mr. Zhouk, as held by the UNDT, does not provide any evidence that he suffered actual financial and/or moral damages.

15. The Secretary-General submits that monetary compensation is not always the only available remedy and that it is therefore sometimes, as in this case where there is no evidence of harm, sufficient to find in favour of the Appellant.

Considerations

16. The Dispute Tribunal has an unquestioned discretion and authority to order and quantify compensation under Article 10(5) of its Statute for violation of the legal rights of a staff member as provided under the Staff Regulations, Rules, and administrative issuances.

17. However, not every violation will necessarily lead to an award of compensation. Compensation may only be awarded if it has been established that the staff member actually suffered damages. This Court will not approve the award of compensation when absolutely

³ *Wu v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-042, para. 33; *Antaki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-095, para. 20.

⁴ *Chen v. Secretary-General of the United Nations*, Judgment No. UNDT/2010/068, para. 39.

no harm has been suffered. Moral damages may not be awarded without specific evidence supporting the award.⁵

18. In the instant appeal, though the Dispute Tr

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Dated this 29th day of June 2012 in Geneva, Switzerland.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Garewal

(Signed)

Judge Simón

Entered in the Register on this 12th day of September 2012 in New York, United States.

(Signed)

Weicheng Lin, Registrar