



Case No.: UNDT/GVA/2010/039
(UNAT 1645)
Judgment No.: UNDT/2011/022/Corr.1
Date: 26 January 2011
English

Translated from French

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7. On 7 June 2005, the Applicant contacted the Staff Counsellor to inform him that she was suffering continuing harassment and to ask him, among other things, to whom she could submit a complaint for harassment.

8. On two occasions, 10 and 20 June 2005, the Applicant informed the Medical Service of the Vienna International Centre that she was the victim of harassment.

9. On 22 June 2005, the Applicant informed the Chief, PRES that her relations with the Chief, ECU had deteriorated. On the same day, she met with the Chair of the Staff Council, then on 28 June 2005 with the Ombudsman, concerning the harassment she claimed to be suffering.

10. From 29 June to 1 July and then from 13 July to 13 November 2005, the Applicant was placed on medical leave.

11. By memorandum dated 31 October 2005, the Medical Service of the Vienna International Centre notified the Administration that the Applicant's treating specialist considered that she could resume work subject to certain conditions involving adjustments to her working hours and productivity targets. It was also noted in the memorandum that with effect from 31 October 2005, the Applicant would resume her duties working from home.

12. In the autumn of 2005, the Chief, PRES offered the Applicant a telecommuting compact. On 1 November 2005, the Applicant asked whether it was necessary to amend the compact in the light of the "recommendation of the Medical Service". The Chief, CMS replied that no amendment to the compact was necessary and that the Medical Service would resolve any problems on a case-by-case basis. The Applicant contends that the Chief, PRES also gave her to

13. By email of 23 November 2005, the Chief, ECU informed the Applicant that she was free to consult one of her colleagues on any topic but where the distribution of work and administrative questions were concerned, she, the Chief, would continue to act as her supervisor and first reporting officer.

14. From 6 December 2005 to 8 January 2007, the Applicant was again placed on medical leave.

15. Following a request by the Applicant, the President of the Staff Council informed her on 14 March 2006 that she could submit a complaint for harassment to the Panel on Discrimination and Other Grievances, which she did on 21 March 2006.

16. On 4 May 2006, the Chief, ECU and the Chief, PRES in their respective capacities as the Applicant's first and second reporting officers co-signed and forwarded to the Administration, in the form of a "Note for the File", an appraisal of the Applicant's performance for the period from 1 April 2005 to 31 March 2006. They pointed out, among other things, that the Applicant's productivity was "clearly unacceptable" having regard to her level and her several years of service.

17. On 26 June 2006, the Panel on Discrimination and Other Grievances gave its report. In the report it explained that it was unable, based on the materials available to it, to conclude that the Applicant's medical condition was the result of the harassment she claimed to be suffering. It suggested, however, that the Applicant be transferred to a different service in an area other than editing and invited her to actively pursue that possibility, with the help of the Administration.

18. On 5 July 2006, in response to a request by the Applicant, the Human Resources Management Service ("HRMS") informed her that she could contest the appraisal given by the Chief, ECU and the Chief, PRES before the Joint Appeals Board ("JAB"). The next day, the Applicant stated in an email to HRMS that she intended to contest the "Note for the File" by the Chief, ECU and the Chief, PRES, her performance appraisal for the period 2004-2005, and the findings of the Panel on Discrimination and Other Grievances; she also wanted

action to be taken on her complaint for harassment and asked to whom she might forward it.

19. On 11 July 2006, in a document addressed to the Panel on Discrimination and Other Grievances and HRMS, the Applicant contested the findings of that Panel.

20. In response to her request of 6 July, HRMS informed the Applicant on 13 July 2006 that she had the option of appealing against the inclusion of the “Note for the File” by the Chief, ECU and the Chief, PRES in her Official Status File, or of challenging its contents in a document that would be placed, together with the “Note for the File”, in her Official Status File. She could not, however, rebut the Panel’s findings. As to her performance appraisal for the period 2004-2005, the Applicant was required to sign her appraisal before

25. In September 2006, the Chief, CMS convened a meeting at which the question of withdrawal of the “Note for the File” by the Chief, ECU and the Chief, PRES was discussed.

26. On 13 November 2006, in response to a request by the h^{ppvver2 rabh}

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c. Because of the Administration's errors, the Applicant's professional reputation has been damaged and her career prospects compromised, as evidenced by the fact that the Chief, PRES was a member of a selection panel that decided to appoint an applicant other than herself to a vacant post in the ECU.

38. The Respondent's contentions are:

a.

harassment had been established. The Tribunal must, therefore, rule on whether the Applicant's allegations are substantiated having regard to the provisions applicable at the time the events took place.

40. Staff regulation 1.2(a), which sets out the core values staff members of the Organisation must respect, provides:

Staff members shall uphold and respect the principles set out in the Charter, including faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women. Consequently, staff members shall exhibit respect for all cultures; they shall not discriminate against any individual or group

ensuring that any allegation of harassment, sexual harassment and/or abuse of authority will continue to be taken seriously and will be fully investigated”.

44. The above-cited provisions clearly show that at the time of the acts characterised by the Applicant as harassment, the Administration was under a duty to take prompt action on her complaint for harassment.

45. The Applicant contends that, from late 2003 to July 2006, she was subjected to harassment in the workplace by the Chief, ECU, who was her direct supervisor and first reporting officer from 1 July 2004, and that, on 7 October 2004, she reported to the Chief, PRES that the Chief, ECU had verbally abused her. It is not disputed that the Chief, PRES then suggested that she refer the matter to the Staff Counsellor for mediation.

46. Starting in June 2005, the Applicant contacted the Medical Service of the Vienna International Centre on several occasions. She claimed that her health problems were due to the harassment she was suffering and she was placed on medical leave a number of times between 29 June 2005 and 8 January 2007.

47. On 22 June 2005, the Applicant notified the Chief, PRES of the deterioration in her relations with the Chief, ECU and, on the same day, met with the President of the Staff Council to inform him that she believed she was the victim of harassment. On 28 June 2005, the Applicant met with the Ombudsman.

48. On 31 October 2005, the Medical Service wrote to the Administration informing it that the Applicant's treating specialist considered that she could resume work subject to certain conditions, after which the Chief, PRES offered her a telecommuting compact, which the Applicant accepted on 10 November 2005.

49. After consulting the President of the Staff Council, on 21 March 2006, the Applicant filed a complaint of harassment with the Panel on Discrimination and Other Grievances, which submitted its report three months later, on 26 June 2006. While the Panel found that the documents on the file did not bear out the

existence of acts of harassment, it recommended that the Administration assign the Applicant to another service, where the pace of work would be less intense.

50. On 6 July 2006, the Applicant asked HRMS what action was being taken on her complaint for harassment, and that Service replied on 13 July 2006.

51. The above account shows that, when the Applicant informed her supervisors that she wished to file a complaint for harassment against the Chief, ECU, the Administration responded to her requests for information and took care to direct her to the competent services. It is also established that, following the filing of the complaint with the Panel on Discrimination and Other Grievances, that Panel gave its report within a reasonable time and recommended that the Applicant be offered another post.

52. The Applicant maintains that the procedure before the Panel on Discrimination and Other Grievances is vitiated by irregularities in that the Panel did not question her, nor did it hear the witnesses she had asked to call.

53. Administrative instruction ST/AI/308/Rev.1 entitled “Establishment of Panels on Discrimination and other Grievances” dated 25 November 1983, sets out the terms of reference of the Panels on Discrimination and Other Grievances and the procedure to be followed. The instruction provides, among other things, that the Panels shall endeavour to act expeditiously, that they may require the staff member concerned to submit a written statement giving details of the grievance, and that they shall have access to all documents which, in their opinion, might be pertinent. The instruction does not, on the other hand, impose any obligation on them to hear witnesses called by either party.

54. In the present case, the Tribunal notes that the Applicant submitted an eight-page document to the Panel on Discrimination and Other Grievances giving details of her allegations, as well as a six-page chronology giving her version of the facts. Furthermore, throughout the entire investigation, from 21 March at the earliest to 26 June 2006 at the latest, the Applicant was on medical leave. The Panel therefore exercised its powers of discretion in deciding that it was not

necessary to summon the Applicant, who was on medical leave, to appear, or to call other witnesses.

55. In support of her claim that she was the victim of harassment by the Chief, ECU, the Applicant contends, first, that her workload was excessive and that she was given productivity targets too high for her to achieve. However, the fact that the Administration demands high productivity from its officials cannot of itself be regarded as an act of harassment and other supporting elements are needed; in this case there are none, as the Applicant has not shown that the workload required of her was greater than for other staff members.

56. The Applicant alleges that the fact that the future Chief, ECU was designated as her mentor from November 2003 at a time when she was not yet the applicant's supervisor was an act of harassment on her part. But such a decision can obviously only have been taken by the person who was the Applicant's supervisor at the time, not the person who would later become her supervisor.

57. Lastly, the Applicant contends that the inclusion of the "Note for the File" drawn up by the Chief, ECU and the Chief, PRES in her Official Status File demonstrates the harassment to which she was subjected by the Chief, ECU. However, that "Note for the File", which was jointly signed by the Chief, PRES and the Chief, ECU, is not disrespectful in content and the comments on the Applicant's performance in it are carefully worded.

58. The facts as described above show that the Applicant has not established either that the Administration failed to take appropriate action on her complaint of harassment, or that she was the victim of harassment by the Chief, ECU. It remains for the Tribunal to determine whether, as the Applicant maintains, the Administration failed in its duty to guarantee her a safe and healthy working environment.

59. The principle whereby the Administration is bound to provide a working environment conducive to the health of its staff members is enshrined in staff regulation 1.2(c) in force at the time of the facts in this case. Under that provision, which sets out the basic rights and duties of the Organization's staff members,

close to those of bulletin ST/SGB/2002/13, in the Secretary-General's bulletin ST/SGB/2008/5 dated 11 February 2008, which provides:

2.2 The Organization has the duty to take all appropriate measures towards ensuring a harmonious work environment ...

3.2 Managers and supervisors have the duty to take all appropriate measures to promote a harmonious work environment, free of intimidation, hostility, offence and any form of prohibited conduct.

64. In the present case, faced with the discordant atmosphere between the Applicant and the Chief, ECU, the Applicant's second supervisor, in other words the Chief, PRES, who told the JAB that she was perfectly aware of that discordant atmosphere, admitted that she had been unable to persuade the Chief, ECU, who also reported to her, to alter her behaviour towards the Applicant.

65. In addition, the ABCC recommended to the Secretary-General on 12 October 2009 that the Applicant's illness should be recognised as attributable to the performance of official duties in the service of the United Nations. By accepting that recommendation, the Secretary-General necessarily admitted that the Applicant had indeed been harmed by her working environment.

66. It is clear from the foregoing that, in failing in its duty to create working conditions conducive to the health of the Applicant, the Administration has incurred liability.

67. The Applicant claims an amount equal to four years' salary, together with interest, as compensation for the moral and material damage she has suffered.

68. Taking the material damage first, the memorandum of

