
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2023/007
Judgment No.: UNDT/2024/034
Date: 27 May 2024
Original: English

Before: Judge Francis Belle
Registry: Nairobi
Registrar: René M. Vargas M., Officer-in-Charge

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v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Amir Ullah Khan

Counsel for Respondent:

Rebecca Britnell, UNHCR
Charlotte Servant-L'Heureux, UNHCR

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as an additional witness to prove the Applicant's condu

the case of MM to aggravate the impact of the allegations under investigation. Thus, MV's statement suffers from dishonesty due to the breach of her obligations under section 5.29 of UNHCR/HCP/2014/4.

h. MM was interviewed by the IGO on the basis of the interview of MV in which the latter stated that MM was uncomfortable with the Applicant, however, neither MV testified to this effect nor did MM make any reference to being harassed or being made uncomfortable by the Applicant. The allegations made against the Applicant in MM's interview was the basis on which a negative inference was drawn against the Applicant, however, in her testimony before the Tribunal she skipped this vital aspect and only testified based on hearsay.

i. MM admitted that the Applicant was nominated twice as the mediator/facilitator to resolve her problems with fellow colleagues. MM could not recall if the Applicant had given her a reprimand or censure in culmination of the aforementioned disputes. As such, *mala fides* against the Applicant cannot be ruled out. Additionally, MM did not deny that there are different cliques within UNHCR.

j. The Complainant's testimony is full of lacunas, doubts and irreconcilable accounts as ~~sub~~nt2to out.

in proving that in fact the Complainant and the Applicant had never gone together to the top floor.

m. The Applicant has had an unblemished service record, is a devout husband and a caring father of two daughters, whilst the Complainant is 10 years older than the Applicant.

n. In the presence of a fully functional kitchen, it does not make sense that the Complainant and the Applicant would go upstairs only to boil milk when both the milk and the stove for its boiling were available on the first floor's fully functional kitchen. The impossibility of taking milk from the downstairs kitchen to boil it upstairs and then bring it downstairs for preparing tea is lost on logic and common sense.

o. That the alleged incident took place for 30 minutes yet the milk was not burnt or spilt and EL did not go to check on them upstairs is bereft of all logic.

p. Being such a strong and vocal woman, it is impossible that the Complainant could have remained quiet regarding the alleged occurrence on its day and thereafter for such a considerable time.

q. A message dated 20 December 2021 addressing the Applicant as "Hi Dear" and asking the Applicant whether he had safely reached his destination would not have been composed by the Complainant if she had been harassed on 19 December 2021. The Complainant would have avoided exchanging and initiating niceties with the Applicant if she was harassed by him on 15 or 19 December 2021.

r. The Complainant would not have appreciated the Applicant's role in understanding and facilitating her in an email dated 31 December 2021 if she had been sexually harassed by the Applicant.

s.

- i. Day by day account of his life to disprove the dates the alleged incidents occurred;
- ii. Documentary evidence showing that there was no chance of any untoward incident happening between the two;
- iii. Cogent evidence regarding cliques and the turmoil of the P-5 post;
- iv. In the agreed statements of facts, the Complainant admitted that they would have regular dinners in December on the floor occupied by the Complainant followed by tea; and
- v. Up until the Complainant's testimony before the Tribunal, the Applicant was kept in the dark regarding the day of the alleged occurrence and the unknown person who was kept waiting for tea which seriously diminished the Applicant's defence because had he known the name of the person to have been EL, then he could have testified to the impossibility of the occurrence.

13. The Applicant seeks the following reliefs:

- a. Rescission of the contested decision;
- b. Reinstatement with all back benefits; and the Applicant's internal status to be reassigned within UNHCR to be restored;
- c. Alternatively, he be awarded payment of his full salary and benefits until the ordinary retirement age;
- d. That the investigation report, the due process letter and all related material and the impugned decision be expunged from his personnel file and that he be issued a factually correct certificate of employment, mentioning the quality of his work and recommending him to future employers;
- e. USD50,000 in moral damages; and
- f. USD50,000 in legal fees.

notwithstanding that he would not be present for it), and the event of the Applicant's travel to Khartoum. Furthermore, the Complainant gave a reasonable explanation as to why she now ascertained a precise date.

j. Finally, the Applicant was not prejudiced, as he had an opportunity to respond, noting the IGO and DHR had told him that the incident allegedly occurred around 15 December 2021; he indeed provided information about his whereabouts during the whole week of 12 December 2021, including on 19 December 2021.

k. During the hearing, the Complainant also identified the colleague with whom the Applicant and herself had a meal and who had stayed behind while she and the Applicant went upstairs to prepare milk for the tea i.e., EL. She however indicated that neither EL nor any other person witnessed the incident or would have heard anything. She explained that she tried to deal with the situation peacefully and confirmed "I didn't scream, I didn't hit him" as she was worried about the possible repercussions on her career, especially given it was her first international assignment. She also testified that when she and the Applicant finally came back down to have tea with EL, she feigned listening to them and once she finished her tea, she excused herself and went back to her room. The Complainant confirmed that she did not want EL, who

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spent the evening of 19 December 2021, around 4.30 p.m. until 9.00 p.m., napping in his bedroom, is unsupported by evidence, (noting that his whereabouts on all the other days around 15 December are at least minimally supported by circumstantial evidence) and is contradicted by his own testimony. Indeed, before the Tribunal, the Applicant stated that, on 19 December 2021, he returned to the SO around 4.00 p.m. and after having a meeting at the office with the Deputy Representative, he ate around 6.30 p.m./7

ulterior motives. The Complainant credibly explained why she decided to report to the IGO. The Applicant also points to a plot to harm his chance in

23. It may be argued that even a much less intimidating form of declaration of interest of sexual kind may cause such tension. Unfortunately, in this case there was touching which demonstrates a strong intention to achieve what was intended. It is therefore permissible to assume that tensions and strained relations would have been caused by the sexual harassment.

The Applicant's Case

24. The Applicant has raised various issues to shake any presumption of sexual harassment. Firstly, the Applicant raises the insinuation that the incident in which the Complainant says the Applicant asked for a kiss and a relationship, while touching her on her breast and attempting to touch her private parts while placing her hand to feel his hard penis was fabricated.

25.

30. The Applicant further raised the issue of a division between the Arab and African staff. However, it is difficult to understand how this affected the complaint

36. MM had said that she did not press the Complainant to provide a date and time of the incident. She believed the Complainant because she appeared really shaken.

37. The Tribunal is therefore satisfied that this incident occurred and that is sufficient to establish a case of sexual harassment against the Applicant.

Due Process Rights

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Conclusion

48. In the circumstances the application is denied in its entirety.

(Signed)

Judge Francis Belle

Dated this 27th day of May 2024

Entered in the Register on this 27th day of May 2024

(Signed)

Eric Muli, Legal Officer, for René M. Vargas M., Officer-in-Charge, Nairobi