



JUDGE INÉS WEINBERG DE ROCA, Presiding Judge.

Synopsis

1. Article 10(5)(a) of the Statute of the United Nations Dispute Tribunal (UNDT) applies to decisions in regards to appointments, promotions, or terminations, but not to staff in between assignments (SIBA), such as in the present case.

Facts and Procedure

2. The Appellant, Vincent Parker (Parker), is currently employed on an Indefinite Appointment at the United Nations High Commissioner for Refugees (UNHCR). In January 2007, he was placed on SIBA.

3. Effective 1 October 2007, he was appointed Senior Desk Officer (SDO), Iraq Support Unit, Middle East and North Africa Desk (MENA).

4. Following an incident with his supervisor, on 8 October 2007, he fell ill and was placed on sick leave by his doctor for an indefinite period of time. On 2 November 2007, the same doctor certified that Parker was able to work half-time for an indefinite period of time. Following a consultation with the Director, Medical Service, UNHCR, on 5 November 2007, it was determined that the position that Parker held in the Iraq Support Unit put him under too much psychological pressure, that his appointment to such post be rescinded, and that he be placed on a less stressful post. On 7 November 2007, Parker was informed of the decision to rescind his appointment, based on the advice of the Director of the Medical Service. Parker has not been appointed to any post since then.

5. On 28 July 2008, Parker filed an appeal with the former Joint Appeals Board in Geneva, seeking *inter alia* the rescission of the impugned decision, a written apology, and the monetary compensation of five-year salary for his suffering as a result of alleged harassment underlying the contested decision.

6. In a judgment dated 27 August 2009, the UNDT found that the procedure followed by the UNHCR in rescinding Parker's appointment was flawed, as Parker had not been informed of the aim of his convocation either prior to or during the medical examination, nor had he been afforded an opportunity to prepare for the examination, or to contest the medical opinion before the impugned decision was taken. Thus, it found that the decision of 7 November 2007 was illegal and decided that it be rescinded. At the

same time, in accordance with article 10(5) of its Statute, the UNDT provided UNHCR with the option to pay Parker a lump sum of two months' net base salary instead of rescinding the decision. In addition, the UNDT ordered that Parker be compensated for moral damage suffered as a result of the above-mentioned unlawful decision in the amount of three months' net

submits that the UNDT did not err in law (i) when it afforded UNHCR an opportunity to provide observations on the facts recounted by Parker on the issue of harassment and his request for compensation; or (2) when it established an amount for compensation for UNHCR to pay should it elect not to rescind the contested decision. The Secretary-General requests that Judgment UNDT/2009/13 be upheld and that the appeal be rejected in its entirety.

Considerations

14. Having examined both parties' submissions, this Court finds:

(a) That Parker's appeal is receivable since it was filed, though incomplete, on 13 October 2009, within 45 calendar days of receipt of the UNDT judgment;


(b) That the UNDT did not err when it ordered UNHCR to file additional submissions within the scope of article 18(2) of the UNDT Rules of Procedure;

(c) That the UNDT quashed the decision of 7 November 2007 on the ground that it was flawed has not been appealed;

(d) That, however, the UNDT erred when it decided to give UNHCR the option to either pay compensation in the amount of five months salary (two months in lieu of reinstating Parker and three months for moral damages), or quash the decision of 7 November 2007, because article 10.5(a) of the UNDT Statute is not applicable. Parker was serving under an indefinite appointment governed by Rule 104.12 (c) of the Staff Rules (100 Series). The 7 November 2007 decision did not concern his appointment, promotion, or termination but his placement between assignments. For this reason,

THE UNITED NATIONS APPEALS TRIBUNAL

Case No. 2009-003



Judge Weinberg de Roca, Presiding



Judge Garewal

Judge Boyko

Dated this 30th day of March 2010 in Geneva, Switzerland.

Original: English

Entered in the Register on this 26th day of April 2010 in New York, United States.

Weicheng Lin, Registrar, UNAT