UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2009/058/ JAB/2009/002

Order No. 103

Date: 28 August 2009

Original: English

Before: Judge Goolam Meeran

Registry: New York

Registrar: Ms. Hafida Lahiouel

Cristina GOMEZ — APPLICANT

v.

SECRETARY-GENERAL OF THE UNITED NATIONS — RESPONDENT

ORDER

HEARING FOR DIRECTIONS

Date of the hearing: 21 August 2009

Counsel for Applicant: Mr. Duke Danquah, OSLA

Counsel for Respondent: Mr. Steven Dietrich, ALU

A Hearing for directions took place on 21 august 2009. The Applicant was represented by Mr. Duke Danquah, and the Respondent was represented by Mr. Steven Dietrich.

Following a detailed discussion on the issues in the case and having explored various options for the most expeditious and just way to proceed

IT WAS ORDERED AS FOLLOWS:

1. To the Applicant

Within 14 days of the date of this Order, the applicant is to serve on the respondents, with a copy to the UNDT, the following further particulars of the application.

1.1. Detailed information including the names, job titles and dates in support of her contention that individuals in a similar position as herself, were treated more favorably by the respondent. The information should be sufficient for the respondents to identify the individuals and their particular circumstances so that they are able to conduct the necessary enquiries, and to provide a response.

1.2. The grounds upon which the applicant states that the examples provided by the respondents in an email from OHRM, are either inaccurate, misleading or not comparable whether by reason of the fact that they are not "regularized staff members" or otherwise.

1.3. Full particulars in relation to the allegations regarding the behaviour of the OHRM Chief as indicated at Annex 4 of the statement of appeal to the JAB.

1.4. To state with precision, the connection between the inappropriate behaviour referred to, and the decision which is the subject matter of this appeal, namely the decision that the applicant was compelled to take a break in service, between two temporary appointments. The applicant is to provide sufficient detail to enable the respondents to know the case they have to meet.

1.5 The applicant is to state by way of clarification, whether the reference in the documentation to another break in service in year 2006 is a matter which she considers relevant in these proceedings, and, if so, to state the basis upon which such a case is being advanced and to explain why this had not been made clear at an earlier stage.

1.6 The applicant is to specify what she is claiming in monetary terms in relation to a claim for emoluments and associated benefits to be restored precisely.

1.7 The applicant is to provide any further information in relation to her claim that she should be compensated for stress and inconvenience and the basis for such a claim.

2. To the Respondent

2.1 The respondent is to produce a full response to the further particulars provided by the applicant within 14 days of receipt of such further information.

2.2 The respondent is to identify the person or persons who were responsible for the decision that the applicant be required to take the three days break in service between the two temporary appointments.

2.3 The respondents are to identify the relevant policy document, which they are relying upon in support of their defense that the treatment accorded to Ms Gomez was in accordance with policy and practice. In so far as they are relying on policy, they should identify the document or documents concerned. If they are relying on practice they are to identify any document describing the practice.

2.4 Insofar as it is the respondent's case that there has been no inconsistency in the application of the policy and practice, they are to provide a full response on receipt of the particulars from the applicant, such that the applicant could assess whether or not, allegations of inconsistency of treatment should be further pursued or alternatively abandoned in these proceedings.

3. To the Parties

3.1 On completion of the process of further clarification, as described herein both sides are to cooperate in providing a set of agreed facts so that the issues and contentions can be narrowed down and any evidence, if necessary will be directed towards the issues in contention.

3.2 The parties are to cooperate in producing a chronology of relevant events as well as a list of the Statutes, Rules, Regulations and any other document being relied upon, in addition to a list of authorities, and judgments of the UNAT.

3.3 Should it be decided in the light of the further information provided by the applicant, and the respondent's answer, that a hearing would be necessary the parties will be expected to identify the witnesses they intend calling and the length of time those witnesses will need to give their evidence on matters that may be in dispute.

3.4 Both parties are at liberty to make any further applications. They deem necessary for the expeditious and just disposal of the case.

3.5 At the end of the process regarding the provision of further information and responses on both sides a decision will be taken as to whether to hold an oral hearing, or whether the case could be decided on the basis of the documents. Both parties will be invited at that stage, to express their views on this question so that a final decision could be taken. It will not be necessary to convene another hearing for directions, but that a short telephone conference may well be necessary in order to avoid unnecessary expenditure of time and costs.

EXPLANATORY NOTE

The hearing for directions, took approximately 50 minutes during which a detailed examination took place of the respective contentions of the parties. At the conclusion of this process, the following emerged as being the essence of the cases put forward by the parties.

For the Applicant

The primary case advanced by the applicant was that she was forced to take a three days break in service on 5, 6 and 7 May 2008 between two temporary appointments. As a result of this enforced break in service she has lost certain continuity rights and benefits. Furthermore, she suffered stress and inconvenience both by the enforced break in service and the delay in making a decision on her new appointment. She was seeking by way of remedy, compensation to include compensation for stress and inconvenience and for the restoration of all emoluments and associated benefits.

For the Respondent

It was the respondent's clear defense to this claim that what they had done was in accordance with policy and practice and that there was no inconsistency of treatment accorded to the applicant in relation to how others were treated. In the circumstances they did not consider that the applicant was entitled to judgment in her favour or any remedy.

SECONDARY ISSUES

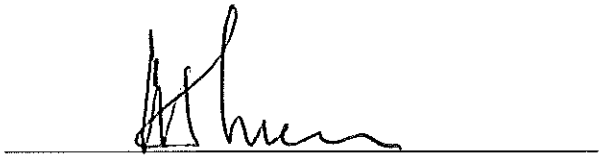
The applicant included in her appeal to the JAB, an exchange of e-mails, which could conveniently be summarized as suggesting that a person referred to as HR Chief, displayed poor interpersonal skills. The e-mails recorded criticisms of this manager. In the circumstances, it was necessary to enquire of the applicant what connection, if any, was there between the alleged overbearing attitude of the chief HR manager and her complaint regarding the compulsory three days break in service. Mr. Danquah took instructions from the applicant who was present and confirmed that she did indeed consider that there was a connection. On probing by the judge, Mr. Danquah took

further instructions confirming that any allegations or suggestions regarding the chief HR manager's conduct was not being advanced before the UNDT as a separate head of claim. He was of course conscious of the fact that any claims regarding bullying or harassment were to be dealt with in accordance with the special procedure laid down by the Secretary-General in ST/SGB 2008/5. In the circumstances Mr. Danquah was asked to take further instructions and to clarify precisely what is the connection.

ORAL HEARING

On the question whether there should be an oral hearing, the parties were informed that a hearing will be necessary to resolve any conflicts of evidence and for this purpose witness statements tendered in evidence will be of limited weight since they would not have been tested in cross-examination.

The parties understood that if an oral hearing was to be dispensed with they will be invited by an appropriate Order to produce final submissions of no more than five pages in length dealing with all issues relating to liability and remedy.



Judge Goolam Meeran

Dated this 28th day of August 2009

To: The Applicant
The Respondent

Entered in the register on 28 August 2009