



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1043

Case No. 1161: MINK

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr. Mayer Gabay, President; Mr. Kevin Haugh, Vice-President; Mr. Omer Yousif Bireedo;

Whereas, on 18 October 2000, Margaret Mink, a staff member of the United Nations, filed an Application containing pleas which read, in part, as follows:

**"II: PLEAS**

6. With respect to competence and procedure, the Applicant respectfully requests the Tribunal:

- (c) *to decide* to hold oral proceedings ...;
- (d) *to order* the production of the Report of the [Office of Human Resources Management (OHRM)] investigative panel ...

7. On the merits, the Applicant respectfully requests the Tribunal:

...

- (b) *to find and rule* that the compensation ... awarded by the Respondent for unfair treatment is insufficient ...;

- (c) *to find and rule* that the Joint Appeals Board [(JAB)] erred as a matter of law and equity ...;
- (d) *to find and rule* that the Applicant's fundamental rights to due process were violated ...;
- (e) *to order* the Respondent to issue a finding that the Applicant's claims were well founded and that her right to a working environment free from harassment was violated; and to take appropriate steps to address the atmosphere of harassment in the Applicant's department and to prevent a repetition of the ill-treatment afforded the Applicant;
- (f) *to award* the Applicant appropriate and adequate compensation in the amount of three year's net base pay ...;
- (g) *to fix* ... the amount of compensation to be paid in lieu of specific performance at three year's net base pay ...;
- (h) *to award* the Applicant as cost, the sum of \$7,500.00 in legal fees and \$500.00 in expenses and disbursements."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 30 April 2001;

Whereas the Respondent filed his Answer on 30 April 2001;

Whereas the Applicant filed Written Observations on 18 July 2001, and the Respondent submitted comments thereon on 30 April 2002;

Whereas the Applicant submitted additional Written Observations on 22 May 2002;

Whereas, on 3 July 2002, the Tribunal decided not to hold oral proceedings in the case;

Whereas the facts in the case are as follows:

The Applicant entered the service of the Organization on 31 May 1979, on a short-term appointment as a clerk/ typist at the G-2 level. The Applicant passed the "G to P" exam in 1995 and, at the material time, had a permanent appointment and occupied the P-2 level position of Photo Caption Writer, Photo Unit, Department of Public Information (DPI).

In February 1997, the Applicant met with the Co-ordinator for the Panel of Counsel to discuss incidents during which she felt she had been sexually harassed by her direct supervisor, the Officer-in-Charge of the Photo Unit (OIC/PU). On 6 March, the Applicant lodged a formal

complaint regarding this sexual harassment. On 8 April, OHRM arranged a meeting between the Applicant, the OIC/PU and the Executive Officer, DPI, with a view to achieving informal resolution. The meeting proved unsuccessful.

On 22 April 1997, pursuant to a request from the Applicant, the Panel on Discrimination and Other Grievances (the Grievance Panel) initiated an investigation into her complaints. In its report of 13 October 1997, the Grievance Panel recommended as follows:

"Because of the inability to corroborate [the OIC/PU's] testimony in its entirety and more than several instances of his unprofessional behaviour, the Panel has found in favour of [the Applicant]. We recommend that [the OIC/PU] be formally reprimanded for his behaviour by a written notice to be put in his file. We also suggest that when [the OIC/PU] returns from his present leave of absence, that he undergo formal training on management skills, especially in the area of sensitive issues, that is, sexual harassment. We also suggest that the Department as a whole be educated in this area, especially since it appears that until now sexual harassment has been tolerated and encouraged."

On 4 November 1997, following complaints from the Applicant that the OIC/PU was frequently present at the Photo Unit and that she found his presence "intimidating and threatening", he was requested to "kindly stay away from the Photo Unit until the end of [his] special leave without pay". During a meeting on 1 December, which was attended by both the OIC/PU and the Applicant, a number of interim measures were agreed upon, in particular that, upon his return to the office, the OIC/PU would not act as the Applicant's direct supervisor.

On 10 December 1997, the Assistant Secretary-General, OHRM, advised the Applicant that she had designated two staff members to conduct an independent OHRM investigation into the matter, in accordance with paragraphs 7 and 9 of administration instruction ST/AI/379 of 29 October 1992, entitled "Procedures for Dealing With Sexual Harassment".

On 21 April 1998, the Office-in-Charge, Media Division, DPI, wrote to the Assistant Secretary-General, OHRM, noting that "a continuation of the current state of affairs is impacting seriously not only on the two staff members most directly concerned, but also on the important work of the Photo Unit, the Media Division and the Department".

On 17 June 1998, the Assistant Secretary-General, OHRM, advised the Applicant that she had considered the report of the OHRM investigation panel (the OHRM report) and had found no evidence sustaining the Applicant's allegations of sexual harassment. She added that, however, as a result of the investigation, serious management problems had come to light which,

she assured the Applicant, would be addressed. The Applicant responded on 25 June, requesting a copy of the OHRM report: this request was refused "out of concern for the rights of all staff".

On 10 August 1998, the Applicant requested administrative review of the decisions of the Assistant Secretary-General, OHRM.

On 9 October 1998, the Applicant lodged an appeal with the JAB.

In December 1999, the OHRM investigators were asked to appear as witnesses before the JAB. On 31 March 2000, The Legal Counsel opined that it would be inappropriate for "members of an investigation panel to testify before the JAB on matters pertaining to a report which they had adopted". Nonetheless, the JAB heard testimony from one of the members of the OHRM investigation panel and a member of the Grievance Panel.

The JAB adopted its report on 26 June 2000. Its procedure, considerations and recommendation read, in part, as follows:

***"Procedure***

20. ... [T]he Chair recalled to all that the Panel's mandate did not involve an inquiry into the allegation of sexual harassment, but was confined to the procedural issue raised by [the Applicant], i.e., whether or not the Administration had dealt promptly and effectively with her complaint.

...

***Considerations***

...

26. ... The Panel had reservations about the manner in which the [OHRM investigation] panel carried out its investigations.

27. ... [A] properly conducted investigation and fact-finding in such a matter should have interviewed a significant number of female staff members in an attempt to discern whether or not there was a pattern of behavior. ...[T]he failure of the OHRM investigation panel to interview [the secretary of the Grievance Panel] (who confirmed to the Panel that she was present at Headquarters during the entire period of the OHRM panel investigation) was an indication of the lack of thoroughness and initiative with which the fact finding was carried out.

28. ... The Panel concluded ... that not only had the OHRM investigative panel done an incomplete and unsatisfactory job, but that the inadequacies of their report were self evident ... [resulting] in harm to [the Applicant].

...

30. The Panel noted that ... no action [to separate the Applicant and the OIC/PU who continued to work in the same unit] was taken during fifteen months [and this] was ... a failure on the part of the Administration to take prompt and effective action to deal with the situation. In addition to the burden it placed on the other staff members of the Photo Unit, it was a denial of fair treatment to [the Applicant].

***Recommendation***

31. For this denial of fair treatment, the Panel recommends that [the Applicant] be paid an indemnity equivalent to three months net base salary.

..."

On 20 July 2000, the Under-Secretary-General for Management transmitted a copy of the report to the Applicant and informed her that the Secretary-General had decided to accept the JAB's unanimous recommendation and to pay her compensation of three months net base salary.

On 18 October 2000, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Respondent's failure to take appropriate action in respect of the Applicant's allegations of sexual harassment constituted a denial of due process. Further, as a result thereof, the Applicant was subjected to further harassment.
2. The Respondent's actions were directed towards protecting the Organization from financial liability rather than preventing and punishing sexual harassment.
3. The Respondent refused to disclose information to the Applicant or to provide her with relevant documentation.
4. The JAB erred in limiting its enquiry to the procedural sufficiency of the investigation.
5. The compensation awarded to the Applicant was insufficient.

Whereas the Respondent's principal contentions are:

1. The Applicant has no right to be supplied with the documentation she has requested.
2. The JAB was correct in determining that its role was not to carry out its own investigation into the allegations.
3. The Applicant received appropriate compensation for the denial of fair treatment.

The Tribunal, having deliberated from 3 to 23 July 2002, now pronounces the following Judgement:

I. The Applicant has submitted an Application to the Tribunal contending that her rights were violated by the failure of the Organization to act promptly, effectively, and in good faith, in addressing complaints of sexual harassment she made against her supervisor, the OIC/PU. She asks for compensation for damage to her career, reputation and emotional well-being, and for the violation of her rights under the Staff Regulations and Rules.

II. The central issue in this case to be addressed by the Tribunal is whether the Administration investigated the Applicant's allegations fairly, in good faith, and in a timely and effective manner. In Judgement No. 560, *Claxton* (1992), the Tribunal found that, when allegations of sexual harassment have been made, "the Secretary-General is surely bound to conduct promptly such reasonable investigations as the situation calls for". (Para. VIII.) In Judgement No. 707, *Belas-Gianou* (1995), the Tribunal remarked that "the Tribunal is sensitive to claims of sexual harassment and has made clear the responsibility of the Organization to address them promptly and effectively". (Para. IX.)

The Tribunal recognizes that the Administration took a number of measures to address the Applicant's complaint. In accordance with ST/AI/379, the Respondent initiated an informal approach which, when it failed, was followed by formal procedures. The Tribunal will summarise the important steps taken by the Administration.

Soon after the Applicant first lodged her complaint, the Chief, Cluster 7, Operational Service Division, OHRM, arranged a meeting on 8 April 1997 between the Applicant, the OIC/PU and the Executive Officer, DPI, with a view to achieving informal resolution. No reconciliation was reached during the meeting.

Thereafter, the Grievance Panel undertook an investigation of the complaint. The Grievance Panel recommended that the OIC/PU be formally reprimanded for his behaviour. He was subsequently advised to stay away from the Photo Unit until the end of his special leave without pay.

On 1 December 1997, the Assistant Secretary-General, DPI, arranged a meeting which was attended by the two parties, among others, to discuss interim measures the Department could take pending a decision from OHRM on the findings of the Grievance Panel.

On 10 December 1997, the Assistant Secretary-General, OHRM, informed the Applicant that she had designated an OHRM panel to investigate the matter. The OHRM investigation panel ultimately reported that there was no evidence to sustain the Applicant's allegations of sexual harassment.

III. On the other hand, the JAB noted that the Administration took fifteen months to complete their procedures: from 6 March 1997, the date upon which the Applicant submitted her complaint, until 17 June 1998, the date upon which the Assistant Secretary-General, OHRM, announced her decision. The Tribunal cannot consider such a period as either timely or prompt.

The Tribunal finds that while the Administration took a number of steps to address the Applicant's complaint, they did not take the necessary measures to contain the problem or its serious negative impact on the two staff members involved as well as the work of the Department.

The Applicant and her alleged harasser continued to work or be present in the Photo Unit, throughout. Both complained about the situation which was described by the Officer-in-Charge, Media Division, DPI, as "impacting seriously not only on the two staff members most directly concerned, but also on the important work of the Photo Unit, the Media Division and the Department". Accordingly, the Tribunal concurs with the JAB in its conclusion that the fact "that no action was taken during fifteen months was ... a failure on the part of the Administration to take prompt and effective action to deal with the situation. In addition to the burden it placed on the other staff members of the Photo Unit, it was a denial of fair treatment to [the Applicant]". Under the circumstances, the Tribunal finds that the Respondent should have reassigned either the Applicant or her supervisor to another department.

The Tribunal finds that the Applicant is entitled to appropriate compensation for denial of fair treatment and for the suffering she endured during this long period.

IV. Among the measures taken by the Respondent in response to the Applicant's complaint was the composition of an OHRM investigation panel to conduct "initial investigation and fact finding" in conformity with paragraph 9 of administrative instruction ST/AI/379. Paragraph 11 (a) of the same Administrative Instruction stipulates that "[s]hould the facts as a result of the initial investigation not appear to indicate that misconduct has occurred, [the Assistant Secretary-General, OHRM, may] decide that the case should be closed". On the basis of the conclusions of the OHRM investigation panel, on 17 June 1998 the Assistant Secretary-General, OHRM, informed the Applicant that "[she had] carefully considered the report and ha[d] found that there was no evidence to sustain the allegations of sexual harassment against [the OIC/PU]".

In its report on the Applicant's appeal, the JAB noted that "the Chair recalled to all that the Panel's mandate did not involve an inquiry into the allegation of sexual harassment, but was confined to the procedural issue raised by [the Applicant], i.e., whether or not the Administration had dealt promptly and effectively with her complaint". The JAB expressed reservations about the manner in which the OHRM investigation panel had carried out its investigations. For instance, its report indicated that the panel interviewed only one female staff member who had close contact with the OIC/PU. According to the JAB, a properly conducted "investigation and fact finding" in such a case should have included interviews with a significant number of female staff members in an attempt to discern whether or not there was a pattern of behaviour on the part of the accused. Moreover, the JAB noted that the OHRM investigators had reported that they had been unable to contact a certain female staff member and that

"the failure of the OHRM investigation panel to interview [the staff member in question] (who confirmed to the Panel that she was present at Headquarters during the entire period of the OHRM panel investigation) was an indication of the lack of thoroughness and initiative with which the fact finding was carried out".

The JAB added, "not only had the OHRM investigative panel done an incomplete and unsatisfactory job, but ... the inadequacies of their report were self-evident. The Panel was of the view that the failure of the OHRM investigative panel to do a thorough investigation and fact



finding resulted in harm to [the Applicant]". It is significant to note in this regard that the Secretary-General took note of the finding of the JAB that the OHRM Panel "should have interviewed more female staff members than it did". This reflects particularly negatively on the appropriateness of the conclusion reached by the Assistant Secretary-General, OHRM, that "there was no evidence to sustain the allegations of sexual harassment", although that conclusion was fully justified by the inadequacy of the report.

In the view of the Tribunal, the foregoing observations and conclusions of the JAB reaffirm that the Respondent failed to deal fairly, comprehensively and effectively with the Applicant's complaint.

V. The Applicant contends that during the investigations following her allegations of sexual harassment and misconduct, the OIC/PU was promoted to the P-4 level. He subsequently applied for and was granted an agreed termination, thereby foreclosing any possibility of further disciplinary or administrative action against him. The Tribunal notes that the Respondent does not refute this contention. In the view of the Tribunal, the promotion and agreed termination should have been stayed, pending the outcome of the investigation.

VI. The Tribunal now turns to the Applicant's contention that she should have been provided with a copy of the OHRM report. The Respondent counters that she has no right to be provided with the report as it pertains to an investigation against another staff member. The Respondent attempts to justify this bizarre conclusion by explaining that the Applicant's supervisor, and not the Applicant, was the subject of the investigation. He contends that this decision protects the rights of due process of the accused and that, in accordance with ST/AI/379, the Applicant was entitled only to be informed of the course of action taken in response to her complaint.

In paragraph 12 of ST/AI/379, however, it is stipulated that "[t]he alleged harasser and the aggrieved individual shall be informed promptly of the course of action decided upon by the Assistant Secretary-General for Human Resource Management". The Tribunal does not agree with the Respondent's contention that this language denies the Applicant a right of access to the report: the provisions of the Administrative Instruction are a minimum guarantee to prompt information regarding the outcome rather than a limit on the rights to information of either party.

Further, in the instant case, it is important to note that the Applicant's supervisor *did* receive a copy of the report.

The Tribunal notes that the report of the Grievance Panel was made available to both parties. In addition, as the JAB had before it all necessary documents, including the OHRM report, the Applicant was entitled to such documentation. Accordingly, the Tribunal is not convinced that the decision of the Respondent to deny the Applicant the OHRM report was justified.

VII. In view of the foregoing, the Tribunal:

1. Orders the Respondent to pay the Applicant compensation of six months' net base salary at the rate in effect on the date of Judgement;
2. Orders the Respondent to provide the Applicant with a copy of the report of the OHRM investigation panel; and,
3. Rejects all other pleas.

VIII. *Special Remark*

The Tribunal notes that, due to her previous involvement in the case, the Executive Secretary of the Administrative Tribunal did not participate in the discussions or deliberations, nor will she append her signature to the Judgement.

(Signatures)

Mayer GABAY  
President

Kevin HAUGH  
Vice-President

Omer Yousif BIREEDO  
Member

Geneva, 23 July 2002

A. Kirsten Baxter  
Associate Legal Officer