



Date. --

following day, the Head of the Commodities Branch sent an email to the Director of DITC, rejecting the Applicant's assertions as "baseless presumptions" made on account of the latter's disappointment for not having been selected for the post of Head of the Branch. He suggested that either he or the Applicant be transferred to another unit, or that the UNCTAD Secretary-General reaffirm his authority as Head of the Commodities Branch.

6.

- failed to inform the Applicant about the Commodities Branch policy and excluded him from the preparation of meetings in relation thereto;
- kept the Applicant out of all preparations for the twelfth United Nations Conference on Trade and Development though he had involved several staff members who were working under the Applicant’s supervisor;
- changed the Applicant’s recommendation of a candidate for a post in his Section and failed to inform the Applicant that the selected staff member had arrived in his Section;
- ordered the move of the Applicant’s secretary against her will and without his consent;
- issued instructions to staff members working under the Applicant’s supervision without consulting or informing him;
- never copied the Applicant on any correspondence;
- never appointed the Applicant as officer-in-charge when he was away or not in a position to attend a meeting.

8. In the Applicant’s view, such actions tended to create a hostile work environment and, as such, constituted harassment. Thus, he asked to be transferred out of the Commodities Branch and requested that the Head of the Branch be “made aware that his behaviour [wa]s against the Staff Rules” and removed from his post. His complaint was referred to the Director of the Division of Management and to the Officer-in-Charge of the Human Resources

M aHí6p,BeLvHí HCFypbY6F--íH,H(BoLb,YíY,FBaLv-píYFF-BrLFíyb,-B LvF6í-Fy,B-,Y6F--íH,T((c,p

recommended that the issue be addressed at a managerial level by means of mediation.

10. On the same day, the Director of the Division of Management sent an email to the UNCTAD Secretary-General, in which he endorsed the findings of the Officer-in-Charge of HRMS that the matter did not amount to harassment and rather fell into the category of disagreements on work performance or other work-related issues. He suggested that a meeting be held

15. On 23 December 2008, the Applicant resigned with effect from 31 March 2009.

16. On 5 January 2009, the Applicant asked ALU to be provided with the “findings dated 21 July 2008 relating to this harassment complaint”. ALU responded on the following day that he ought to direct his request to the competent body within UNCTAD.

17. On 16 January 2009, the Applicant submitted to the JAB his statement of appeal. After the matter was transferred to the Tribunal, a directions hearing was held on 4 May 2010, in order to discuss the opportunity for an amicable settlement. On 15 February 2011, a hearing on the merits took place, to which the

Division of Management found that the case was about disagreement on work-related issues and did not amount to harassment.

b. There is no obligation for the Administration to conduct a formal fact-finding investigation upon receipt of a harassment complaint. In line with section 5.14 of ST/SGB/2008/5 and the case law of the former UN Administrative Tribunal, it is within the discretionary power of the Administration to decide whether or not an investigation should be carried out and whether or not disciplinary measures should be imposed on a staff member. In the present case, the decision was within the discretionary power of the Secretary-General of UNCTAD;

c. The Administration made various attempts to solve the conflict between the Applicant and the Head of the Commodities Branch. It first tried to re-establish a healthy work environment by informal means before the Applicant lodged his harassment complaint. Thereafter, it properly considered his harassment complaint and duly apprised him of its outcome. Further, it did not avoid dealing with the harassment complaint by reassigning the Applicant out of the Commodities Branch, such reassignment having been requested by him;

d. The Applicant has not discharged the burden of proving that the decision not to conduct an investigation was based on extraneous factors.

Considerations

21. The Applicant challenges the decision not to take action on the harassment complaint he submitted on 7 July 2008. This matter is governed by the Secretary-General's bulletin ST/SGB/2008/5, which entered into force on 1 March 2008 and was thus applicable at the date when the Applicant submitted his harassment

other work-related issues may in some circumstances be considered harassment. The Tribunal considers that a literal interpretation of section 1.2 leaves no room for excluding systematically “[d]isagreement on work performance or on other work-related issues” from the scope of ST/SGB/2008/5.

25. The Tribunal further considers that, for the purpose of determining

finding investigation” may not be too narrowly interpreted. Although pure disagreement on work performance or on other work-related issues “normally” excludes the application of the procedures foreseen in ST/SGB/2008/5, a fact-finding investigation ought to be initiated if the overall circumstances of the particular case offer at least a reasonable chance that the alleged facts may amount to prohibited conduct within the meaning of the bulletin.

31. With respect to the Applicant’s allegations in his written complaint of 7 July 2008, the Tribunal concedes that some of them, as isolated incidents, could have been regarded as purely work-related issues. This may, for example, be true regarding the decision to send someone else than th

applicant had suffered damage in the form of neglect and emotional stress. This, in the view of this Tribunal, confirms that compensation may be awarded for the moral injury sustained as a result of a procedural flaw (see also Fröhler UNDT/2010/135 and Kamunyi UNDT/2010/214).

35. In the instant case, the Applicant did not put forward any claim to the effect that he should be compensated for material injury, and indeed the Tribunal finds that he did not suffer any material damage.

36. As to the moral damage, the Tribunal first emphasizes that the protection

this duty in the present case and that, as a result, the Applicant endured during three months and a half unnecessary psychological distress.

39.

Conclusion

42. In view of the foregoing, the Tribunal DECIDES:

a. The Respondent is ordered to pay the Applicant compensation in the amount of USD10,000 for the moral damage he suffered;

b. The above amount is to be paid within 60 days from the date the Judgment becomes executable, during which period interest at the US Prime Rate applicable as at that date shall apply. If the sum is not paid within the 60-day period, an additional 5 per cent shall be added to the US Prime Rate until the date of payment.

(Signed)

Judge Thomas Laker

Dated this 10th day of March 2011

Entered in the Register on this 10th day of March 2011

(Signed)

Víctor Rodríguez, Registrar, Geneva