

---

UNITED NATIONS DISPUTE TRIBUNAL

---

A

n

A

n

n

---

**Before:** Judge Rowan Downing

**Registry:** Geneva

**Registrar:** René M. Vargas M.

## Introduction

1. By application filed on 30 May 2016, the Applicant contended that the Applicant is entitled to the relief sought.

**This case is closed: no further action is required from you or others.**

**Thank you. (the decision of 24 December 2015)**

**7. The Applicant alleges that there were a significant number of irregularities concerning the double payment and other matters. The Applicant also asserts that**

application. The Applicant recalls, as a heading in her submission, that “[s]taff members have a duty to report any breach of the Organisation’s regulations and rules to officials whose responsibility it is to take appropriate action and cooperate with duly authorized audits and investigations. Staff members shall not be retaliated against for complying with these duties.” The Tribunal notes that this is directly drawn from staff rule 1.2(c).<sup>1</sup> The Applicant asserted that the alleged

n

(b) Any former staff member of the United Nations,

and the consequences of the decision” in determining that Ms. Lee was not challenging an administrative decision subject to judicial review.

18. This has subsequently been applied by the UNAT in Abu Ayyash 2015-UNAT-543 (paragraph 16).

19. In the current matter the Applicant asserts that she has complied with her contractual duty to report a matter she believes fell within her obligations under staff rule 1.2(c). To make such a report is consistent with the contractual obligations she had as a staff member. However, once having made the report she has no personal or contractual interest in the consideration of, and the decisions flowing from such report. She had a duty, which she performed, in full. It was then for the Organisation, and it alone, to determine what, if any, action would be taken following the report. The fact that the decision to proceed or not is with the Respondent alone is clear from staff rule 10.1(c)<sup>2</sup>, whereby it is provided:

The decision to launch an investigation into allegations of misconduct, to institute a disciplinary process and to impose a disciplinary measure shall be within the discretionary authority of the Secretary-General or officials with delegated authority.

20. The Applicant has no personal interest in the outcome. The decision had no direct legal consequence upon her contractual relationship with the Organisation. It would only have a direct legal consequence for those who are the subject of the complaint, if a decision were to have been taken to investigate the matter and to proceed with disciplinary action against such individual(s).

21. If the complaint had been one of harassment, then the Applicant would have an interest, as any decision would have a direct legal consequence upon her rights granted under the Regulations and Rules. In the application and the reply by the Applicant to the motion for summary judgment, the Applicant makes it clear that she is not dealing in this matter with any issues of formal harassment under ST/SGB/2008/5 “Prohibition of Discrimination, Harassment, including Sexual Harassment, and Abuse of Authority”.

---

2

22. To assist the Applicant appreciate this matter, the Tribunal sets out below the relevant passages in the case of Nwuke 2010-UNAT-099 which make the clear distinction in respect of when a staff member may or may not have a right of review of a decision in respect of an investigation into alleged misconduct. The

33. ST/SGB/2008/5 then sets out the informal and formal proceedings that must take place and in paragraph 5.17, the final report of those proceedings is referred to as follows:

The officials appointed to conduct the fact-finding investigation shall prepare a detailed report, giving a full account of the facts that they have ascertained in the process and attaching documentary evidence .... This report shall be submitted to the responsible official normally no later than three months from the date of submission of the formal complaint or report.

34. Paragraph 5.18 provides for the possible courses of action one of which the responsible official shall take: (a) If the report indicates that no prohibited conduct took place, the responsible official will close the case and will inform the alleged offender and the aggrieved individual; (b) If the report indicates that there was

a factual basis for the allegations but that, while not sufficient to justify the institution of disciplinary proceedings, the facts would warrant managerial action, the responsible official shall decide on the type of managerial action to be taken, inform the staff member concerned, and make arrangements for the implementation of any follow-up measures that may be necessary. Managerial action may include mandatory training, reprimand, a change of functions or responsibilities, counselling or other appropriate corrective measures. The responsible official shall inform the aggrieved individual of the outcome of the investigation and of the action taken;

(c) the third option is stated as follows:

If the report indicates that the allegations were well-founded and that the conduct in question amounts to possible misconduct, the responsible official shall refer the matter to the Assistant Secretary-General for Human Resources Management for disciplinary action and may recommend suspension during disciplinary proceedings, depending on the nature and gravity of the conduct in question. The Assistant Secretary-General for Human Resources Management will proceed in accordance with the applicable disciplinary procedures and will also inform the aggrieved individual of the outcome of the investigation and of the action taken (footnote omitted).

(d) A final option is established in paragraph 5.19:



**Should the report indicate that the allegations of prohibited conduct were unfounded and based on malicious intent, the Assistant Secretary-General for**

**Conclusion**

**27. In view of the foregoing, the Tribunal DECIDES:**

**The application is rejected.**

**(Signed)**

**Judge Rowan Downing**

**Dated this 16<sup>th</sup> day of August 2016**

**Entered in the Register on this 16<sup>th</sup> day of August 2016**

**(Signed)**

**René M. Vargas M., Registrar, Geneva**