

Case No.: UNDT/NBI/2022/108

Judgment No.: UNDT/2023/

7. According to the Applicant, since 2018, she was subjected to public humiliation and demeaning comments denigrating her ethnicity, professionalism, and performance by her First Reporting Officer (“FRO”), the Chief of Acquisitions and Contract Management.²

(Unsatisfactory conduct, investigations, and the disciplinary process), and contained issues that could best be addressed through performance management.⁸ The HoM/FC decided to take administrative action that included asking the UNIFIL Chief Supply Chain Management (“CSCM”) to resume efforts to informally resolve the matter and ensure that both parties fully understand the operational expectations within the Section.⁹ The HoM/FC informed the Applicant that he considered the matter was closed.¹⁰

13. On the same day, 12 March 2021, the HoM/FC issued a reprimand to the Applicant’s FRO and cautioned the FRO against retaliation.¹¹

14. On 3 November 2021, the Applicant addressed a complaint to the HoM/FC referring to continuing incidents that she termed harassment and seeking protection against retaliation by changing reporting lines.¹²

15. By email dated 12 November 2021, the Director of Mission Support (“DMS”) responded, on behalf of the HoM/FC, that it was not clear whether the Applicant’s email,

[...] raises new issues that were not covered in the first complaint or contains conduct and discipline-based issues that go beyond management and/or performance parameters. If you do have new specific issues to raise, please do so formally either through C/SCM, OiC RCDS or OiC HR.¹³

16. On 23-24 November 2021, the Applicant submitted to the RCDS a request for protection against retaliation and what she termed as the “second formal complaint” against her FRO.¹⁴

⁸ UNDT/NBI/2022/076, reply, annex R/2, para. 3 and application, annex 11.

⁹ UNDT/NBI/2022/076, reply, annex R/2, para. 4 and application, annex 11.

¹⁰ UNDT/NBI/2022/076, reply, annex R/2, para. 7.

¹¹ Reply, page 3, para. 8; Respondent’s response to Order No. 064 (NBI/2023), annex R/8 and R/9
UNDER SEAL

¹² UNDT/NBI/2022/108, application, annex 1 titled *UNDT 20.10.22 Brief with Annexes_1*;
UNDT/NBI/2022/076, application, annex 12 titled *Email sent to HoM on 03. 11.2021*.

¹³ UNDT/NBI/2022/108, application, annex 13 titled *email from DMS 12.11.2021*.

¹⁴ UNDT/NBI/2022/108, application, annex 2b titled *submission of a request for protection against retaliation to RCDU on 23. 11.2021*.

17. On 23 November 2021, the Applicant met with the RCDS and raised issues related to her working environment.¹⁵ On 25 November 2021, the Applicant met with the DMS in order to discuss her complaint.¹⁶

18. A meeting between the CHRO, the Human Resources Section (“HRS”), the Applicant and her FRO was held on 29 November 2021. The HRS suggested the involvement of the Ombudsman’s Office.¹⁷

19. In parallel, the Officer-in-Charge (“OiC”) RCDS held meetings with the Applicant and her FRO. In a report dated 9 December 2021, the OiC-RCDS informed the DMS that, in her assessment, the Applicant’s complaint did not amount to new allegations of misconduct but rather described a continuation of the conflict between the two staff members, and that the allegations, if substantiated, would constitute basis for management and performance concerns, but would not amount to harassment or abuse of authority nor otherwise merit disciplinary action. The OiC-RCDS’ assessment was that any further mediation would be futile. She recommended suspension of the supervisory relationship between the two staff members and that allegations raised by both staff members be addressed by way of administrative action.¹⁸ The Applicant was informed of the recommendation.¹⁹

20. In spite of the OiC-RCDS’s recommendation, the DMS requested the United Nations Ombudsman and Mediation Services (“UNOMS”) to resolve the conflict by mediation.²⁰ In December 2021 and January 2022, a Senior UNOMS Conflict Resolution Officer in Vienna carried out mediation sessions with the conflicted parties. The parties refused to sign a mediation agreement, they were, however, unanimous as to that their working relation was untenable.²¹

¹⁵ UNDT/NBI/2022/076, application, annex 2d titled *emails to and from RCDU*.

¹⁶ UNDT/NBI/2022/108, application, annex titled *MEU letter chronology of events 27.04.2022*, para. 23.

¹⁷ *Ibid.*, para. 24.

¹⁸ UNDT/NBI/2022/076, reply, annex R/4.

¹⁹ UNDT/NBI/2022/076, application, annex 2d titled *email from RCDU on case status 25.01.2022*; annex 2c titled *Meeting Follow-up email from RCDU 06.12.2021*.

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21. On 28 January 2022, the UNOMS recommended that the HoM/FC “[...] separate the two staff members from the supervisor and supervisory relationship”.²²

22. According to the Respondent, HRS presented two options to the DMS on 11 February 2022: (i) reassignment of one party; or (ii) reassignment of both parties. On 13 April and 10 May 2022, the DMS, the CHRO, and the CSCM held meetings to discuss the two options presented by UNIFIL HRS. They supported the option to reassign at least one staff member from the Contract Management Unit to a different section within UNIFIL.²³ Following the meeting, it was decided to reassign the two staff members from the Contract Management Unit to other sections within the Mission.²⁴

23. On 13 May 2022, the DMS met separately with the parties to advise them on the possibility of reassignment.²⁵

24. The HoM/FC wrote to the Applicant on 2 June 2022, informing her of his decision to reassign her to the Procurement Section with the function of Procurement Officer at the FS-6 Level.²⁶

25. On 10 June 2022, the Applicant requested management evaluation of the reassignment decision.²⁷

26. From 1 July 2022, the Applicant's FRO was reassigned to a Chief Contingent Owned Equipment position at the P-4 level. The Applicant was laterally reassigned to the Procurement Section with the post she had encumbered.²⁸

27. In the following days, the Applicant met with the Chief of the Procurement Section to discuss about a possible modification of the job description that would best

²² UNDT/NBI/2022/076, application, annex 14 titled *email from Mr. Gang Li 28.01.2022*

²³ UNDT/NBI/2022/108, reply, para. 14.

²⁴ *Ibid.*, para. 15.

²⁵ *Ibid.*, para. 16 and para. 25.

²⁶ UNDT/NBI/2022/108, application, annex 2 titled *Contested decision Memo dated 02.06.22.*

²⁷ UNDT/NBI/2022/108, application, section VI, page 4, paras. 1 and 2.

²⁸ UNDT/NBI/2022/108, reply, page 4, para. 19.

use her experience in line with the audit recommendations.²⁹ She also wrote to the CSCM requesting information on her new job description and her status of reassignment. By email dated the same day, the CSCM advised the Applicant to address her request for clarification regarding her current status to her FRO and HRS.³⁰

28. From 8 July 2022, the Applicant proceeded on annual leave for nine days.

29. On 22 July 2022, the Applicant received the Management Evaluation Unit's ("MEU") response to her request for management evaluation which informed her that the contested decision had been upheld.³¹

30. She then requested for Certified Sick Leave ("CSL") which was approved until 11 November 2022.³²

31. On 14 November 2022, the Applicant returned from sick leave and refused to sign the Terms of Reference of her new assignment.³³

Submissions

The Respondent's case

37. The application should be dismissed because the impugned decision is legal and rational.

38. Staff regulation 1.2(c) provides that staff members can be assigned by the Secretary-General to any activities of the Office. Section 2.5 of ST/AI/2010/3 (Staff

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allegations; finally – the fact that it was admitted by the Respondent in the reply in Case No. UNDT/2022/076³⁶, which states “the Applicant raised another formal complaint [...]”. A subsequent denial by the Respondent³⁷ that the Applicant had raised a second complaint is unmerited in light of the documented facts.

45. The propriety of the impugned decision must, therefore, be evaluated in the context of ST/SGB/2019/8 and related administrative issuances.

46. The Tribunal finds that the procedural steps mandated by ST/SGB/2019/8 were not accurately followed.

47. First, the Mission failed to forward the Applicant’s second grievance to OIOS. In accordance with section 5.4:

Possible prohibited conduct shall be reported in accordance with section 4 of ST/AI/2017/1 either to the responsible official, with a copy to the Office of Internal Oversight Services (OIOS), or to the responsible official in the field.

call to decide about forwarding the harassment and retaliation complaint to OIOS or not, no matter the likelihood of it being again referred to the Mission. The obligation to inform OIOS is expressed in categorical terms and not as a discretionary matter. The Tribunal concedes, nevertheless, that this formal default may have been immaterial for the outcome.

49. Second, the Mission failed to properly address the Applicant's allegations. In accordance with ST/SGB/2019/8 section 5.5

(i) The affected individual and the alleged offender shall be informed on a strictly confidential basis of the outcome of the matter [...] if the responsible official has taken managerial or administrative measures.”

50. The duty to inform of the outcome must be seen as corresponding to the staff member's right to be so informed. As affirmed by the Appeals Tribunal in the context of ST/SGB/2019/8, “[t]here is “a contractual entitlement to request that [the complainant's] allegations are addressed”³⁸ and, in the context of a similarly worded regulatory policy “[t]hat right, and the efficacy of the Policy, would be meaningless if it did not include the right or expectation to a proper and reasonable consideration of the complaint for the purpose of determining whether to produce an investigation report.”³⁹ This is not to say that the Mission should have conducted an investigation⁴⁰ nor that the conclusion of the RCDS - implicitly adopted by the Mission - according to which allegations expounded by the conflicted staff members had not supported a finding of misconduct, in particular harassment or retaliation⁴¹, had amounted to inappropriate use of discretion. However, the Applicant's right to be informed of the outcome required communication - at minimum in general terms - of the findings regarding the allegations and a demonstration of a rational connection of the ultimate outcome with these findings. This was not done and justifiably may have caused the

³⁸ *Luvai* 2014-UNAT-417, para. 62.

³⁹ *Ross* 2023-UNAT-1336, para. 23.

⁴⁰ As per UNAT's jurisprudence, the decision to close a complaint of alleged prohibited conduct is discretionary in nature *Sanwidi* 2010-UNAT-804, para. 42; *Nadeau* 2017-UNAT-733, para. 33.

Applicant to feel dismissed, or even penalised, by a dry announcement of her own reassignment.

51. The third matter concerns the choice of measure applied to the Applicant. The Tribunal notes that ST/SGB/2019/8 contemplates reassignment only as an interim measure (section 6.10(b)). ST/AI/2017/1, to which ST/SGB/2019/8 refers, defines in Section 2.1:

[...]

(d) “Administrative measures” means an oral or written reprimand, reassignment and/or change of duties;

(e) “Managerial action” means an oral or written caution, warning or advisory communication, training, coaching and/or referral of the staff member to the Staff Counsellor;

Section 5.7 provides:

In cases where the responsible official decides not to initiate an investigation, the responsible Official should decide either to close the matter without further action or to:

(a) Take managerial action, without prior consultation with the staff member; and/or

(b) Issue a written or oral reprimand [...]

Section 5.7(b) suggests that reassignment is a measure to be applied after investigation.

The same results from section

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59. In conclusion, despite the procedural shortcomings indicated in paragraphs 47-50 above, the impugned decision conforms with the law. Absent illegality, the question of compensation does not arise.

JUDGMENT

60. The application is dismissed.

(Signed)
Judge Agnieszka Klonowiecka-Milart

Dated this 30th day of May 2023

Entered in the Register on this 30th day of May 2023

(Signed)
Abena Kwakye-Berko, Registrar, Nairobi