
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2023/020

Judgment No.: UNDT/2024/036

Date: 19 June 2024

Original: English

Before: Judge Margaret Tibulya

Registry: New York

Registrar: Isaac Endeley

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Cristian Gimenez Corte

Counsel for Respondent:

Lucienne Pierre, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant is a Director, at the D-2 level, in the Office of Information and
On 9 July
2023, he filed an application contesting the 10 January 2023 decisions of the Office

report of possible harassment and abuse of power against the [United Nations]
Controller . The Applicant also requests compensation for harm
suffered and the referral of his case to the Secretary-General for possible action to
enforce accountability against the Controller.
2. On 9 August 2023, the Respondent filed a reply challenging the receivability
of the application on the basis that the contested decision is not reviewable by the
Tribunal. The Respondent also submitted that even if the application were receivable,
it should be rejected because it lacks merit.
3. This case was assigned to the undersigned Judge on 1 April 2024.
4. On 3 April 2024, the Tribunal conducted a case management discussion
parties and their legal representatives.
5. The following issues were discussed at the CMD:

7. The Tribunal considers that this

12. By Order No. 097 (NY/2023), the Tribunal noted that the acts of retaliation alleged by the Applicant occurred in the context of a proposed internal restructuring of OICT, whereby the Applicant was being reassigned from one Division within OICT to another, still at the D-2 level. In rejecting the motion for interim measures, the Tribunal observed that the restructuring discussions had been initiated long before the Applicant filed the applications. Therefore, it was unlikely that the proposed reassignment of the Applicant was in retaliation for his filing of the applications.

Considerations

Receivability as a preliminary matter

13. Under the Appeals Tribunal jurisprudence, the Dispute Tribunal is required to satisfy itself that an application is receivable pursuant to art. 8 of its Statute (see, for instance, 2011-UNAT-182, as affirmed in *Christensen* 2013-UNAT-335, and *Barud* 2020-UNAT-998). The Appeals Tribunal has also held that the Dispute Tribunal may consider the receivability of an application as a preliminary matter before reviewing the merits of the case (see, for instance, *Pellet* 2010-UNAT-073).

14. The Applicant simultaneously filed two separate applications on 9 July 2023. In the first application, registered under Case No. UNDT/NY/2023/019, the Applicant contested the decision by OIOS to decline to open an investigation into his report of prohibited conduct against the Controller for possible noncompliance with United Nations financial rules and regulations. In that case, the Tribunal found that the Organization, not the Applicant, was the aggrieved party in any alleged misconduct financial rules and regulations. The Tribunal also found that the Applicant had not cited any regulations or rules which afforded him a right to compel the Administration to conduct an investigation. Accordingly, the Tribunal dismissed that application as not receivable (see UNDT/2024/025).

Controller have

c. The Organization has discretion on how to conduct a review and how to assess a complaint of prohibited conduct. in a reasonable accusation, does a staff member have a right to an investigation against another staff member which may be subject to judicial review ST/AI/2017/1 lists the factors that the responsible official may consider in undertaking a preliminary assessment of a report of unsatisfactory conduct. OIOS retains the authority to decide which cases to investigate and it when it undertook a preliminary allegations against the Controller and declined to open an investigation.

d. As stipulated in sec. 1.1 of ST/SGB/2019/8, disagreements over work

appropri

Scope of judicial review

23. The Appeals Tribunal has held that when reviewing the validity of the the role of the Dispute Tribunal is to determine whether the contested decision is legal, rational, procedurally correct, and proportionate. This means reviewing whether relevant matters have been ignored or irrelevant matters considered, and whether the decision is absurd or perverse. It is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Administration amongst the various courses of action open to it. Nor is it the role of the Dispute Tribunal to substitute its own decision for that of the Administration (see, for instance, *Barbulescu* 2023-UNAT-1392, para. 54; *Kanbar* 2021-UNAT-1082, para. 30; *Sanwidi* 2010-UNAT-084, para. 42).

24. The Tribunal notes that in declining to open

Abuse of authority

1.8 Abuse of authority is the improper use of a position of influence, power or authority against another person. This is particularly serious when a person uses their influence, power or authority to improperly influence the career or employment conditions of another, including, but not limited to, appointment, assignment, contract renewal, performance evaluation, working conditions or promotion. Abuse of authority may also include conduct that creates a hostile or offensive work environment which includes, but is not limited to, the use of

(e)

essentially a work-related matter that could be resolved through other processes than a formal investigation.

30. The Tribunal further notes that, as stipulated in sec. 5.1 of ST/AI/2017/1, the Controller shall determine whether the information of unsatisfactory conduct received merits any further action.

There is no indication that in making the contested decision, OIOS ignored any relevant factors or took into consideration any irrelevant factors. Additionally, pursuant to sec. 5.6(b) of ST/AI/2017/1, upon conclusion of a preliminary assessment OIOS has the authority to decide not to initiate an investigation. Given the circumstances of this case, as detailed above, the Tribunal finds that the decision to refer the report of possible harassment and abuse of authority against the Controller was a reasonable exercise of the Controller's discretion. Accordingly, the Tribunal finds that the contested decision was lawful.

31. Having found that the contested decision was lawful, the Tribunal cannot order any compensation. Therefore, the claim for compensation is dismissed. (*Ovcharenko* 2024-UNAT-1439, para. 51; *Banaj* 2023-UNAT-1357, para. 118).

32. Similarly, as the decision by OIOS not to open an investigation is found to be lawful, the referral of this case to the Secretary-General for possible action to enforce accountability against the Controller.

33. The Tribunal also recalls that the Applicant requested a hearing in this case. Given the Tribunal's findings, that the contested decision was lawful, there is no need for a hearing.

34. Further, as reiterated in Order No. 042 (TQ 3Y/12 0 s042

full consideration and resolved through Order No. 097 (NY/2023). Therefore, the oral motion made at the CMD is moot.

35. Finally, the the joinder of his two cases is now moot as Case No. UNDT/NY/2023/019 was already adjudicated separately via Judgment No. UNDT/2024/025.

Conclusion

36. The application is dismissed.

(Signed)

Judge Margaret Tibulya

Dated this 19th day of June 2024

Entered in the Register on this 19th day of June 2024

(Signed)

Isaac Endeley, Registrar, New York