

Case No. UNDT/NY/2019/083

Order No. 141

in determining the contested or impugned decisions to be reviewed” (see *Fasanella* 2017-UNAT-765, para. 20).

8. In the present case, the Tribunal defines, on a preliminary basis, the issues to be adjudicated upon as follows:

- a. Was the decision to place on the Applicant on administrative leave receivable, and if so, lawful?
- b. Was it legal to impose the disciplinary sanction of placing a written censure against the Applicant for five years in her official status file?
- c. Was the administrative decision to impose an administrative measure of removal of all supervisory functions from her for two years lawful?
- d. Should any of the contested decisions be unlawful, what relief, if any, is the Applicant entitled to?

The decision to place the Applicant on administrative leave

9. The Respondent, in essence, submits that the decision to place the Applicant on administrative leave is not receivable as it was taken during a disciplinary process and not following it as per staff rule 11.2(b).

10. In response, the Applicant submits that the relevant decision “made up part of the investigative process, which was only concluded with the transmission of the disciplinary sanction, and as such is receivable”. The Applicant further contends that she “did, in fact, request a management review of the administrative leave and noted explicitly the damage the administrative leave was doing to her career viability and reputation” in an email exchange on 21 October 2018.

11. The Tribunal notes that under staff rule 11.2(a) a staff member who wishes to “formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment ... shall, as a first step, submit to the

Secretary-General in writing a request for a management evaluation of the administrative decision”. This requirement does, however, not apply to “a decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following the completion of a disciplinary process”.

12. In the present case, it is evident that the decision regarding placing the Applicant on administrative leave was taken during—and not following—the disciplinary process.

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respectively. These incidents were recorded in the contested decision of 21 November 2019 by the acting Deputy Executive Director, Management, who further stipulated that these facts were “not in dispute”, as follows:

- (i) At the times in question, you acted in a supervisory capacity to [Mr. B (name redacted)] and [Mr. C (name redacted)];
- (ii) For several months prior to the meetings of 13 March 2018 and 12 April 2018, [Mr. B] had been experiencing performance-related issues and engaged in conduct, including communicating with colleagues on matters that were outside his purview, that caused confusion and stress in your office and exposed your office to reputational risks;
- (iii) You told investigators that, during the 13 March 2018 meeting, you may

(xii)

... There may be instances, where [the Dispute Tribunal] will come to the conclusion that the facts on which the disciplinary measure was based have been established, where necessary by clear and convincing evidence, during the investigation proceedings. In such cases, [the Dispute Tribunal] will normally undertake an oral hearing as provided for in disciplinary cases under Article 16 of [the Dispute Tribunal's] Rules of Procedure, but the Tribunal may decide not to (re)hear witnesses or gather additional evidence.

26. Finally, the Tribunal notes that the Respondent's reply indeed exceeds the ten-page limit as indicated by the Applicant in her 16 March 2020 response to the reply and that the Respondent has unduly failed to request permission to do so. Considering the Tribunal's instructions made in the present Order, it does, however, not find that the Applicant has suffered any prejudice by this procedural breach and will allow the reply in its entirety.

IT IS ORDERED THAT:

27. The Respondent's reply is allowed in its entirety even though it exceeds the ten-page limit;

28. By **4:00 p.m. on Wednesday, 7 October 2020**, the Respondent is to file all remaining witness statements made in the context of OIAI's investigation;

29. By **4:00 p.m. on Wednesday, 14 October 2020**, each party is to file a submission responding to the following questions:

a. What additional evidence, if any, is to be produced? If so, the requesting party is to indicate:

i. What documentation is needed and what specific disputed fact(s) is/are this/these document(s) to corroborate?

ii. If oral evidence, who is to give testimony and what specific disputed fact(s) is/are this/these witness/es to corroborate? A

