

Judgment No. 2022-UNAT-1232



Counsel for Appellant: Self-represented

JUDGE SABINE KNIERIM, PRESIDING.

1. Before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), Mr. Baker Kosmac Okwir, an Auditor at the P-3 level, Internal Audit Division, Office of Internal Oversight Services (IAD/OIOS and OIOS, respectively) in Geneva, contested the Administration's decision not to initiate a fact-finding investigation into his complaint against the Chief, Headquarters Audit Section (HAS), IAD/OIOS (Chief), and the Director, IAD/OIOS (Director). By Judgment No. 2021/026, the UNDT dismissed the application.

2. Mr. Okwir has filed an appeal. For the reasons set out below, we uphold the UNDT Judgment.

Facts and Procedure

3. Following previous assignments in other duty stations, Mr. Okwir began service as an Auditor at the P-3 level with the United Nations High Commissioner for Refugees (UNHCR) IAD/OIOS in Geneva on 1 August 2019.

4. On 30 August 2019, Mr. Okwir began an exchange of e-mails with the Chief, HAS,

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27. Contrary to Mr. Okwir's assertion that the UNDT was not allowed to consider the comments of the A

sufficient grounds warranting the start of the investigation procedure after conducting a preliminary assessment of the allegations set out in the complaints.

31. The UNDT correctly found that the contested decision was lawful. First, the Judgment stated that the OiC/OIOS reasonably concluded that the allegations did not amount to prohibited conduct even if true. Therefore, the UNDT agreed with the assessment of the OiC/OIOS, who considered no misconduct of any nature had occurred. In so concluding, the UNDT's analysis was not restricted to harassment and abuse of authority. Second, contrary to Mr. Okwir's claims, the facts that he presented in his complaint only amounted to work-related issues, not misconduct. Finally, contrary to Mr. Okwir's claims, the OiC/OIOS did consider the additional information that he had presented on 5 October and 23 October 2019. On 25 October 2019, the OiC/OIOS responded to Mr. Okwir, advising him to discuss with the Director his issues regarding the appointment of another OiC for the UNHCR Field Audit Section instead of the Chief. Therefore, in doing so, the OiC/OIOS addressed the Appellant's contentions in the context of performance management in compliance with ST/SGB/2019/8.

32. Mr. Okwir has not demonstrated that the Director's actions towards him amounted to prohibited conduct. Mr. Okwir is merely speculating that the Director had asked the Chief to draft the 3 October 2019 Director's decision without Mr. Okwir's involvement.

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Considerations

Oral hearing

35. The Appellant requests an oral hearing to get “[t]estimony evidence of two competent witnesses”. Oral hearings are governed by Article 18 of the UNAT Rules of Procedure which provides, in relevant part: “The judges hearing a case may hold oral hearings on the written application of a party or on their own initiative if such hearings would assist in the expeditious and fair disposal of the case.”

36. In the present case we find that an oral hearing would not assist in the expeditious and fair disposal of the case. According to Article 2(5) of the UNAT Statute, the Appeals Tribunal can only receive documentary evidence but may not hear witnesses.

Merits of the appeal

~~1233~~ *Whether the ASG/OIOS had the authority to issue the contested* IOU(t)-54)-0.6c(t)-55[t]-55(t)-556i(th22.9 (p)(

38. The UNDT found that the ASG/OIOS was appointed as OiC/OIOS by the previous USG/OIOS pending the appointment of a new head of entity. As Section 4.3 provides that all subdelegations issued by the predecessor shall remain valid unless otherwise withdrawn or modified by the successor, the UNDT concluded that the mere fact that the new USG/OIOS began her term does not make subdelegations by the predecessor invalid. The UNDT further stated there was no allegationenleg(e)3hene n Tw 19.772 0 .9 (n) (t 12.0-8 (i)5.3 (o)1.2 (n)JTJO Tc 0 Tw 19.7

the appointment of an OiC, an officer ad interim or a replacement head of entity. This is clearly governed by Section 4.3 of ST/SGB/2019/2.

44. Section 4.3 of

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51. And ST/AI/2017/1 provides, in relevant parts:³

Whether the decision not to initiate an investigation was reasonable

56. The UNDT applied ST/SGB/2019/8 which collectively refers to discrimination, harassment and abuse of authority as “prohibited conduct” but provides that “[d]isagreement on work performance or on other work-related issues is normally not considered prohibited conduct and is not dealt with under the provisions of the present bulletin but in the context of

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(f) Misuse of office, including breach of confidentiality and abuse of

may be imposed”.⁶ Contrary to Mr. Okwir’s assertions, this jurisprudence is still valid and also applies to the new framework as laid out in ST/SGB/2019/8 and ST/AI/2017/1. Consequently,

74. However, as stated above, the Appeals Tribunal agrees with the UNDT that the actions by the Chief and Director fall in the realm of workplace disagreements. Therefore, the request is denied.

Judgment

75. Mr. Okwir's appeal is dismissed and the UNDT Judgment is affirmed.

Original and Authoritative Version: English

Dated this 18th day of March 2022.

(Signed)

Judge Knierim, Presiding
Hamburg, Germany

(Signed)

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