

Introduction

- 1. The Applicant, a former staff member who served until 5 March 2012 under a temporary appointment with the United Nations Assistance Mission in Afghanistan (“UNAMA”), contests:**
 - a. the findings of a fact-finding panel constituted to investigate her allegations of harassment on the part of her supervisor, and**
 - b. the non-disclosure of the fact-finding investigation report by UNAMA.**

- 2. By way of remedies, she requests:**
 - a. Voiding the fact-finding panel’s findings and fully disclosing same to her;**
 - b. Removal of all adverse material from all her files pending a UNDT judgment;**
 - c. Her reinstatement in a Political Officer post;**
 - d. Compensation for economic losses, as she was deprived from gainful employment;**
 - e. Compensation for the damage to her career potential, as well as emotional distress;**
 - f. Compensation for violation of her rights due to inaction in response to her complaint, undue delays and failure to protect her from retaliation;**
 - g. That twelve involved staff members be held accountable for harassment and abuse of authority, gross negligence and breaches in the application of rules, as well as total violation of due process and failure to protect her from retaliation following the report of prohibited conduct.**

Case No. UNDT/GVA/2014/017

Judgment No. UNDT/2015/088

27. On 8 May 2012, the Head, Office of Legal Affairs, and Chief of Staff ad interim, UNAMA, addressed an email, inter alia, to the Complaints and Discipline Officer, which read:

As discussed this morning, kindly review the communications from [the Applicant's supervisor] regarding the CDU matter of [the Applicant] and [her supervisor] and advise me at arms length in my [Chief of Staff ad interim] capacity on the issues raised by [the Applicant's supervisor], including suggestions for the way forward which may include alternatives to a Fact Finding Panel, with due regard for due process and equally ensuring the rights of [the Applicant] and [her supervisor].

28. The Applicant was blind copied on the email in question and, on 9 May 2012, she wrote to the members of the fact-finding panel pointing out that she was in receipt of the above-cited email indicating an intention of circumventing the panel's work; she requested the panel's help and intervention.

29. In reply to a request from the Applicant for an update on the status of the investigation, on 17 July 2012, the Head, Office of Legal Affairs, UNAMA, advised that the work of the fact-finding panel convened to investigate her complaint for harassment and abuse of authority had been "held in abeyance following challenges to the composition of the Panel, and other procedural

31. On 27 November 2012, the Applicant received an email, in response to a previous message from her, from one of the members of the fact-finding panel that had been disbanded, stating that “[she] was also disappointed by the way [the] panel [had been] treated”.

32. On 7 December 2012, the Applicant filed an application with the New York Registry of the Tribunal, contesting the decision to disband and not to reinstate the fact-finding panel formed in February 2012 to investigate her allegations of harassment and abuse of authority by her supervisor submitted in 2011, when she served with UNAMA. She claimed that she had been subject to “deliberate attempts to prevent a transparent and fair investigation”, denying her the delivery of justice; she sought, *inter alia*, reconstitution of the fact-finding panel and recommencement of its work.

33. A new fact-finding panel was appointed on 6 January 2013. However, its chair had to be replaced twice as the two staff members who had been appointed as chairpersons left UNAMA. A new panel was eventually appointed on 17 January 2013.

34. The panel had to be reconstituted again on 17 February 2013, as its new chairperson also left UNAMA.

35. By Judgment No. UNDT/2013/033, rendered on 26 February 2013, the Tribunal declared the application filed against the decision to disband and not to

38. On 16 January 2014, the O-i-C and Designated Official ad interim, UNAMA, emailed to the Applicant his memorandum dated 14 January 2014,

Case No. UNDT/GVA/2014/017

Judgment No. UNDT/2015/088

50. By Order No. 136 (GVA/2015) of 1 July 2015, the Tribunal rejected the Applicant's motion in full. Furthermore, it also conveyed to the parties its intention to decide the case without a hearing and based exclusively on the written pleadings and invited them to comment on this point. The Applicant filed comments concerning the Tribunal's rejection of her motion on 6 July 2015, but did not address the Tribunal's intention not to hold a hearing.

d.

f. The Applicant's allegations that the former Senior Legal Adviser, UNAMA, delayed the investigation, are false. The role of the Office of Legal Affairs in this and all other fact-finding investigations is strictly limited to drafting the Convening Order at the request of the Head of Mission, and to provide a short briefing on procedural aspects to the panel. The former Senior Legal Adviser had no responsibility for the timelines of the investigation;

g. The Applicant was not prejudiced by the delay in the investigation for two reasons: (a) she separated from the Organization during the early stages of the investigation and, thus, the delay did not affect her ongoing working relationship, and (b) the ultimate decision was not in her favour; therefore, there would have been no advantage to the Applicant in having her complaint dismissed at an earlier time. Not every illegality will necessarily lead to an award of compensation, and the Applicant has not demonstrated that the delay in considering her complaint under ST/SGB/2008/5 caused her loss or injury that could be compensated with the award of damages;

h. The panel interviewed the Applicant and her supervisors, as well as two additional witnesses, after it had made discretionary judgment

- j. It was determined that it was not necessary to interview national staff. In particular, the four national staff who allegedly wrote the letter dated 13 July 2011, had not sufficient immediate direct or relevant evidence concerning this interaction. Furthermore, the SRSG found reasonable the panel's determination not to interview the alleged signatories of the letter, noting that the authenticity of the letter was questionable based on the information that the former Head of Division transmitted to the panel, namely that two of the alleged signatories were unaware of the letter, and that one signed but the negative statements on the Applicant's supervisor were introduced after he signed;
- k. It is not the task of the Applicant or that of the Dispute Tribunal to

58. The motion is part of a judicial procedure and was dealt with by virtue of the Tribunal's broad discretion to handle proceedings for the fair and expeditious disposal of a case (Bertucci 2010-UNAT-062, para. 23; Leboeuf et al. 2013-UNAT-354, para. 8), whereas UNAMA refusal to disclose the report is one of the

417). As for any discretionary decision of the Organization, it is not the Tribunal's role to substitute its own judgment to that of the Secretary-General (see, e.g., Sanwidi 2010-UNAT-084). The scope of the judicial review in harassment and abuse of authority cases is restricted to how management responded to the complaint in question (Luvai 2014-UNAT-417, para. 64). The Tribunal must thus focus on whether the Administration breached its obligations pertaining to the review of the complaint, the investigation process further to it or the decision-making as to the adequate course of action, which are set out in ST/SGB/2008/5

68. These obligations were analysed in Haydar UNDT/2012/201:

16. ST/SGB/2008/5 clearly delineates the entire procedure to be followed by the Organization upon receipt of a formal complaint of prohibited conduct. Section 5.14 provides that:

Upon receipt of a formal complaint or report, the responsible official will promptly review the complaint or report to assess whether it appears to have been made in good faith and whether there are sufficient grounds to warrant a formal fact-finding investigation. If that is the case, the responsible office shall promptly appoint a panel of at least two individuals from the department, office or mission

29. Section 5.18 sets out several courses of action to be taken by the Responsible Official on the basis of the fact-finding report. These actions range from: (i) closing the case where the report indicates that no prohibited conduct took place, informing the individuals and providing them with a summary of the findings and conclusions of the investigation; (ii) the Responsible Official imposing managerial action if the report indicates that there was a factual basis for the allegations but not sufficient to justify the

77. Without a doubt, this timeline is far from fulfilling the “promptness test”

in having all panel members and witnesses coincide in the mission area due to movement restrictions and the fact that UNAMA staff are entitled to frequent leave and breaks, or even the need to re-schedule the Applicant's interview so that her lawyers could attend.

93. Also, the conflict between the Applicant and her supervisor was extensively documented in writing. Since the panel could therefore largely rely on first-hand documentary evidence, it is hardly surprising that it sought less oral evidence. This does not necessarily mean that the evidence gathered was insufficient or selective.

94. In summary, the panel had wide discretion to determine the evidence that was relevant for the investigation. The Tribunal found no solid grounds to conclude that it exercised this discretion in an unreasonable, arbitrary or otherwise misguided fashion.

Non-disclosure of the investigation report

95. Shortly after receiving the 14 January 2014 memorandum informing her of the closure of her case, the Applicant requested access to the investigation report. The UNAMA management refused, as communicated to her on 22 January 2014. This is the second decision impugned in this application.

96. The obligations incumbent on the Administration in this respect are stipulated in sec. 5.18(a) of ST/SGB/2008/5, as follows:

If the report indicates that no prohibited conduct took place, the responsible official will close the case and so inform the alleged offender and the aggrieved individual, giving a summary of the findings and conclusions of the investigation (emphasis added)

97. Under this provision, the Applicant's right was limited to receiving an account of the panel's findings and conclusions; the Administration was under no obligation to provide her with the report itself (see e.g., Ivanov *vs.* UNAMA, UNDT/2014/017, para. 102).

99. This said, the Tribunal has held that, this general rule notwithstanding, the decision to provide or not a complainant with a copy of the investigation report

104. Second, it is now well-established that the emotional distress of a complainant as a result of the Organization's failure to timely respond to his or her complaint for prohibited conduct amounts to harm warranting compensation (Abubakr 2012-UNAT-272, Benfield-Laporte 2015-UNAT-505).

105. The delays in this case were so important and so persistent that they obviously inflicted considerable anxiety, stress and a sense of neglect and injustice to the Applicant. The Administration could not have ignored that, particularly considering the Applicant's repeated inquiries on the status of the investigation. On this account, the Tribunal awards the Applicant financial compensation in the amount of USD3,000.

106. The Applicant expressly requested that the findings of the fact finding panel be voided. It has already been explained above that the panel's finding themselves are not a contestable administrative decision. Therefore, their rescission cannot be

- b. This amount shall be paid within 60 days from the date this Judgment becomes executable, during which period the US Prime Rate applicable as at that date shall apply. If the sum is not paid within the 60-day period, an additional 5% shall be added to the US Prime Rate until the date of payment; and
- c. All other pleas are rejected.

(Signed)

Judge Thomas Laker

Dated this 18th day of September 2015

Entered in the Register on this 18th day of September 2015

(Signed)

René M. Vargas M., Registrar, Geneva