
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2020/035

Judgment No.: UNDT/2021/045

Date: 28 April 2021

Original: English

Before: Judge Joelle Adda

Consideration

Legal framework

7. The Tribunal recalls that a decision to initiate a disciplinary process falls within the discretion of the Administration (see, for instance, *Abboud* 2010-UNAT-100, para. 34, *Nadeau* 2017-UNAT-733, para. 33 and *Auda* 2017-UNJAT-787, para 30).

8. In *Sanwidi* 2010-UNAT-084 (pam2/F1 S(T)] TJETQ(40)0.00000912 0 612 792 reW*nBT/F1 12 T

(a) 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

Discussion

10. The Applicant claims that his due process rights were violated because OIOS believed his supervisor over him and ignored some of the information he provided in support of his complaint.

11. The Applicant restates the allegations listed in his complaint, providing further details of the alleged events. He also adds allegations of events occurred after the date on which the complaint was submitted.

12. The Applicant questions whether certain witnesses who, in his submission, would corroborate his accounts of the events, were interviewed and argues that he was . He infers that the investigators, who he claims -picked those [witnesses]

13. He states that despite all the chronological details

The Applicant states that the investigators informed him that they would interview other witnesses and then contact him, he therefore expected to be re-interviewed for confirmation and/or further details. However, this never occurred.

14. by and contests some of the witnesses as well as the conclusions drawn by OIOS of some of the documentary evidence gathered during the investigation.

15. Finally, the Applicant restates the allegations put forward in the original complaint.

16. The Respondent responds that OIOS interviewed the Applicant, his supervisor, who was the subject of the complaint and several witnesses in compliance with ST/SGB/2008/5.

17. The Respondent ignored critical elements lack specificity and supe021/

23. OIOS also questioned the supervisor with respect to the allegations of unwelcome sexual conduct during the Thailand trip, also in 2014. The supervisor also

24. With respect to this alleged incident, OIOS further reviewed the documentation identified by the Applicant in support of these allegations. In particular, OIOS examined the email exchanges concerning the preparations for the travel to Thailand. The Applicant claimed that these emails showed that his supervisor had taken a personal deviation through Bangkok in order to spend one day alone with him. He further referred to email exchanges in which his supervisor proposed to buy him dinner and find him a husband .

25. OIOS found that the travel documents did not show a personal deviation through Bangkok but rather a duly approved stopover. The travel documents further showed that the Applicant and his supervisor stayed in the same hotel in separate rooms. While the email exchanges showed an ill-advised familiar tone between the supervisor and the Applicant, they do not substantiate unwelcome sexual conduct.

26. OIOS further questioned the supervisor and several witnesses with respect of the events occurred as of August 2016, which according to the Applicant, constituted OIOS did not discover any evidence to substantiate the allegations. OIOS concluded that a plausible explanation for supervisor was the fact that the latter criticized on several occasions, as well as the long history of difficult interactions between the Applicant and his team, which included a series of formal complaints and counter-complaints.

27. The Tribunal notes that while the Applicant alleges that evidence was ignored and that OIOS investigators were biased against him, he provides no detail in support of these assertions.

28. In the application, the Applicant questions whether a series of individuals were interviewed by OIOS. However, said individuals were not named in the complaint nor does the Applicant assert that he provided these names to OIOS during his interview in the course of the investigation. The Applicant claims that he was unable to provide the names of the witnesses but does not explain why. The Applicant also fails to show how these potential witnesses would be in a position to support the claims detailed in the 26 September 2018 complaint.

29. Having reviewed the complaint and the summary of the investigation findings, the Tribunal is satisfied that OIOS interviewed all relevant witnesses with respect to the incidents of alleged sexual misconduct and reviewed the available documentation. The Tribunal is also satisfied that the conclusion that the evidence does not support that unwelcome sexual conduct occurred during the trips to Nairobi and Thailand is supported by the record and is rational. The Applicant has not been able to show that these findings were motivated by bias against him.

30. With respect to the alleged instances of retaliation which occurred as the result of these events, the Tribunal is satisfied from the record that OIOS interviewed the relevant witnesses. The Tribunal further finds no irrationality in the conclusion that the complaint may have resulted from the deterioration of the Applicant's relationship with his supervisor and his team.

31. Having reviewed the complaint and the summary of the investigation findings, the Tribunal notes that following the filing of the 26 September 2018 complaint and its referral to OIOS, OIOS interviewed the Applicant, his former supervisor as well as several witnesses. OIOS reviewed the documents referred to by the Applicant in his complaint.

32. Following the completion of the investigation, the ASG/OHRM informed the Applicant that she did not find that the evidence supported the conclusion that there was a violation of prohibited conduct and that she would not pursue the matter further.

33. In light of this observations, the Tribunal does not find that relevant matters were ignored or irrelevant matters considered and concludes that the decision was not absurd or perverse.

34. The Tribunal is satisfied that the procedure set in ST/SGB/2008/5 was properly followed.

35. From the above, the Tribunal finds that the Administration made proper use of its discretionary power in reaching the contested decision.

Conclusion

36. The application is dismissed in its entirety.

(Signed)

Judge Joelle Adda

Dated this 28th day of April 2021

Entered in the Register on this 28th day of April 2021

(Signed)

Nerea Suero Fontecha, Registrar, New York