The Application and Procedural History

1. The Applicant was a Senior Protection Officer at the United Nations High Commissioner for Refugees (UNHCR).

Facts and Submissions

2. On 25 February 2019, the Office of Internal Oversight Services (OIOS) informed the Applicant that it has reviewed his reports dated 25 January and 7 February 2019. Specifically, these reports sought an independent assessment of possible misconduct by five

that the Principal and Senior Legal Advisors were tainted by conflict of interest in their representation of the Organisation before the United Nations Dispute Tribunal (UNDT).

- 3. On 8 June 2019, the Applicant filed this application before the UNDT in
- 4.

UNHCR, and that the decision to blacklist him was taken in retaliation of him challenging two selection processes. The Applicant formally complained to the High Commissioner of UNHCR, who responded on 4 February 2019 by informing the Applicant that he had referred the matter to the Office of Internal Oversight Services for investigation.

5. On 25 February 2019, OIOS took the position that as there were a number of applications

Case No. UNDT/NBI/2019/061

Judgment No.: UNDT/2020/173

UNHCR to internally assess and take any appropriate action.

6. On 26 June 2019, the Applicant filed a motion to consolidate this case with

UNDT/NBI/2016/054, UNDT/NBI/2018/040 and UNDT/NBI/2018/083. On 3 July

2019, the Respondent filed submissions strenuously objecting to the motion for

consolidation of this case with the other three matters.

7. On 12 July 2020, the Respondent filed his substantive reply to the application.

The Respondent took the position that the application is not receivable on ground that

a/ the Applicant has not sufficiently shown a nexus between the impugned decision and

the terms of his employment with the Organisation; b/ that the correspondence from

OIOS does not constitute an administrative decision; c/ that the Tribunal does not have

the jurisdiction to review the impugned decision; and that d/ the Applicant has not

identified a violation of his terms of appointment.

8. The Respondent further argues that the Applicant has not shown the impugned

decision to be unlawful.

9. On 27 February 2020, the Applicant filed a motion for determination of this

matter to be expedited and for accountability to be enforced as soon as possible. The

Applicant took the view that an oral hearing was not necessary for proper determination

of this matter.

Deliberations

10. The Applicant Mr Ross complains that he found out that he had been

blacklisted by the former Director of Human Resources and now (at the time of filing)

Inspector General of UNHCR and the Deputy Director of Human Resources of

UNHCR.

3

Case No. UNDT/NBI/2019/061

Judgment No.: UNDT/2020/173

itself. Based on this reasoning, OIOS can proceed to conduct the investigation of the

allegations he has made without in any way interfering with the matters before the

tribunal.

19. But the Respondent argues, citing *Koda*, that the jurisprudence of the UNDT

and UNAT states that there is nothing that the Tribunal can do if the OIOS declines to

act because the OIOS is an independent entity and cannot be ordered to investigate a

matter by the Respondent.

20. Tribunal has determined that there is a distinction to be made on the argument

that the SG cannot instruct OIOS to investigate a matter if OIOS has decided not to

investigate.

21. This reasoning must be contrasted with the argument that OIOS actions cannot

be impugned. The latter is not correct because a decision of the OIOS can be impugned

if the decision adversely affects the legal rights of a staff member or former staff

member etc.

22. In Koda, UNAT held that insofar as the contents and procedures of an

individual report are concerned, the Secretary General has no power to influence or

interfere with OIOS.³ Thus, the UNDT also has no jurisdiction to do so, as it can only

review the Secretary General's administrative decisions. But this is a minor distinction;

as OIOS is part of the Secretariat, it is of course subject to the Internal Justice System.

23. However, what this means is that the decisions of OIOS can come under

scrutiny, and would constitute an administrative decision, when it impacts on the legal

rights of a member of staff or former member of staff who have standing before the

¹ 2011-UNAT-104.

² 2011-UNAT-130.

³ 2011-UNAT-130.

5

Case No. UNDT/NBI/2019/061

Judgment No.: UNDT/2020/173

that it was tainted by factors extraneous to the complaint. On the contrary, the Tribunal finds that OIOS acted properly in referring the matters complained about back to

UNHCR for appropriate investigation and action.

29. The application is therefore not receivable.

ORDER

30. The application is DISMISSED.

(Signed)

Judge Francis Belle

Dated this 30th day of September 2020

Entered in the Register on this 30th day of September 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi

7