
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2022/014

Judgment No.: UNDT/2024/086

Date: 29 October 2024

Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

DE MELO CABRAL

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Christopher Bollen

Michel Reymond

Counsel for Respondent:

Miryoungh An, DAS/ALD/OHR/UN Secretariat

Wei Zhuang, DAS/ALD/OHR/UN Secretariat

Introduction

1. On 5 April 2022, the Applicant, a former staff member of the Office of the
the decision dated
6 January 2022

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- a. cycle this month of March 2019, we continue to receive queries from colleagues about how to complete their respective performance appraisal process for the period April 2018-
- b. ucture does not abide by the [United Nations] nomenclature, and the modus operandi attached to it or the lack of thereof is not in conformity with applicable [United Nations] rules and regulations[.] Moreover, functions and responsibilities as well as supervisory and managerial roles of the Director and Chiefs were stripped away through this reflected in nor commensurate with
- c. individual staff members have endeavored to keep us informally posted about their respective work assignments, the persisting exclusion by the USG/OSAA makes it impossible for those concerned to accurately assess and provide adequate appraisal and supervis

On 12 April 2019, the USG/OSAA reminded all OSAA staff to complete their performance documents by 30 April 2019. She noted that for the 2018/2019 reporting period, the FRO and SRO would remain the same as during the previous reporting period, and that for the period of November 0 0 872 189ceMarch 0 09, the level of functional team leaders would be additional reporting officers (AROs) for those staff members under their supervision. The USG/OSAA also (in)8(dica)6(ted)-67(that)-69(guidanc)6(e)-5()] T

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7. Following a review of the investigation report, and by memorandum dated 19

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27.

members and asked them to report directly to her. The Applicant states that this contravened the then established reporting lines, according to which these staff members reported to their respective Branch Chiefs as FRO and to the Director, DH, as SRO. The Applicant submits that due to the USG/OSAA Senior Managers *de facto* lost their supervisory functions over the P-5 level staff members and stopped acting as their reporting officers starting from January 2018. The Applicant states that, while formally still Chief of CAPDB, he was in truth little more than a figurehead who had no effective supervision or oversight over his subordinates. The Applicant contends that it

the evaluations for the 2018/19 e-PAS cycle given his lack of effective supervisory functions since January 2018 which made it impossible for him to evaluate staff for that cycle. The reform announced by the USG/OSAA on 9 November 2018 and implemented later that month essentially confirmed that the P-5 level staff members were to answer directly to the USG/OSAA. The Senior Managers were formally relegated to other tasks such as resource mobilization, partnerships and planning. They were consequently excluded from their supervisory functions. The new office structure also lacked clarity and foreseeability. The Applicant states that the 9 November 2018

information as to the eventual final structure for the Office and as to the timeline or milestones for this so-called transitional period.

34. The Respondent stat

Respondent submits that for the period from April 2018 to October 2018, before the USG/OSAA introduced the functional teams as part of OSAA reform in November 2018, the Applicant was responsible as FRO for OSAA staff members who were in his branch and under his supervision. To reflect the functional teams, the USG/OSAA divided the 2018/2019 e-PAS reporting period into two one from April 2018 to October 2018 and the other from November 2018 to March 2019, during which a functional team leader should be added as an additional supervisor or additional

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be very careful not to give personal or singular tone each one of us can

that would be more of individual cases

On 3

July 2019, the Applicant, together with other OSAA managers, sent a memorandum to the Chef de Cabinet reporting on continued issues within

OSA

chaos, anxiety and uncertainty continues to prevail in OSAA [...]

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with dignity and respect, as well as with an awareness of their own behaviour and how it may be perceived and/or received by others;

[...]

(g) Report possible prohibited conduct and cooperate with investigations, audits and reviews.

Refusing to process OSAA staff

e-PAS evaluations and refusing a

and Special Advisor on the Prevention of Genocide, that OSAA staff could not use lack of clarity regarding reporting lines as an excuse for not following the USG/OSAA s instructions.

62. The Tribunal acknowledges that the context of this situation was difficult in that the USG/OSAA as the new head of OSAA brought in reform without consulting the Senior Managers in her team or working to build healthy professional relationships with them. This resulted in the Applicant, together with other senior managers feeling sidelined by the USG/OSAA and the creation of two camps in OSAA. The Applicant stated in his testimony that this situation made him feel humiliated and powerless, as he was unjustly excluded from doing his work as Branch Chief despite his years of excellent service for the United Nations; it also impacted his mental health and well-being.

63. The Tribunal notes that the situation in OSAA was suboptimal and that the USG/OSAA, as a new head of office, could have navigated her role more skillfully in the circumstances. However, the Tribunal finds that the Applicant as a senior official did fall short of the expected standard of conduct within this situation. His disagreement with the USG/OSAA reform did not grant him leave to ignore her work instructions or to completely refuse work with a colleague in OSAA.

64. The Tribunal notes, in particular, that during the 2018/2019 performance cycle,

71. As noted above, the record establishes that the Applicant engaged with OSAA staff members and external parties, including representatives of Member States, in building opposition to the instructions and reform of the USG/OSAA. The Respondent submits that the Applicant's actions constituted misconduct. The Respondent argues that the Applicant's actions were not in the context of routine work, but in the context of his insubordination against the USG/OSAA, for instance, by drafting complaints against the USG/OSAA, or other documentation denouncing the authority of the USG/OSAA, refusing to follow the USG/OSAA instructions, and the Applicant and the Senior Managers. The Respondent states that the Applicant's actions delayed the implementation of the USG/OSAA instructions. The Respondent states that a number of those interactions were via private emails, to avoid detection. The Respondent argues that such conduct cannot be characterized as misconduct. The Tribunal

Engaging with other staff members of OSAA

72. The Applicant denies that his engagement with other staff members of OSAA amounted to misconduct. During his testimony, he stated that the Senior Managers routinely work together as part of their respective functions at OSAA. In this respect, it is not out of the ordinary for them to correspond with each other, exchange views and adjust their arguments before submitting co-signed memoranda or other communications to either the USG/OSAA or other stakeholders. The confusion surrounding the ongoing reform furthermore required them to set a unified tone and provide clear proposals, which they did by collaborating with each other. The Applicant submits that consequently, it is incorrect to state that they acted in concert to the USG/OSAA. In terms of the charge that he improperly involved several subordinates in his communications with the Senior Managers, the Applicant stated that this manner of proceeding was dictated by the work reform initiated by the USG/OSAA, which had removed his formal reporting lines and promoted *de facto* the said subordinate staff members as being directly answerable to the USG/OSAA.

the USG/OSAA. As a matter of fact, the P-5 level functional team leaders all sat on the MCM along with the Applicant and the USG/OSAA. The Applicant stated that consequently, it is incorrect to state that the Applicant engaged with these staff the USG/OSAA; in fact, he involved them given their upgraded functions further to the reform.

73. The Tribunal has reviewed the correspondence exchanged between the as misconduct. First, it is not exceptional that the Applicant as a senior manager of the Organization engaged other managers and staff members to make his views of the USG/ especially in a situation where he suspected that a supervisor, the USG/OSAA, through illegal acts of reorganization, created confusion regarding reporting lines.

74. Second, the Applicant, together with other managers, felt marginalized and harassed by the USG/OSAA. It is natural for staff members who all share the same misgivings to discuss such a situation and support each other until the situation is appropriately addressed. The use of private emails between the staff members does not indicate any wrongful conduct, especially in the context where they were feeling harassed by a high-level official of the United Nations and seeking to find a way to report this. It is understandable that the staff members took steps to keep their correspondence confidential and supported each other at a time they found particularly difficult in their workplace. The Tribunal takes note that the Senior Managers were vindicated by the conclusions of a fact-finding panel appointed on 14 December 2018, which found that the USG/OSAA marginalizing her senior managers, and that her actions exhibited poor judgment and lacked the . Therefore,

the Tribunal finds that their exchanges to make their grievances heard and offer support to each other were appropriate.

75. Third, the Organization actively encourages staff members, of all levels, to speak up when they consider a situation to be misaligned with the United Nations values and legal framework. The Tribunal will remind the Respondent that sec. 3.5(f) of ST/SGB/2019/8 states that it is the obligation of staff members to [t]ake action if they witness prohibited conduct, provided they feel comfortable doing so and, where possible, after consulting the affected individual, as well as supporting those impacted, as appropriate and to the best of their ability . Section 3.5(g) of ST/SGB/2019/8 further states that

report possible prohibited conduct
unreasonable for the Administration to then attempt to claim that
engagement with other staff members on the issue of possible prohibited misconduct is **unlawful**. This is especially so in the case of reporting against a supervisor where there are unequal power dynamics at play, and supervisees may need to seek each
 . In such a
context,

all the rot that has been occurring, will be the subject ... Hopefully not (informally translated by OIOS).

77. The other exchange with an external party is dated 21 January 2020. An Ambassador to the European Union informed the Applicant that the USG/OSAA was travelling to Brussels and asked if the Applicant could share any concerns or recommendations to be brought to the attention of the USG/OSAA. The Applicant replied, [redacted] could read I think it was opportune to have contacted me as there is a lot of controversy with the African Group here regarding the theme. I will prepare something and send it to you [redacted] .

78. The Applicant states that the above-mentioned communications were not [redacted] [the

Whether the disciplinary measure applied was proportionate to the offence

80. The principle of proportionality in a disciplinary matter is set forth in staff rule

81. The Administration has the discretion to impose the disciplinary measure that it considers adequate to the circumstances.

operational procedures in connection with the misconduct, whether the staff member engaged in the misconduct despite prior warning, whether the misconduct was fraudulent, manipulative or deceptive, whether the staff member acted alone

89.

in *Kennedy*:

a. Whether the action was accidental, careless, reckless or deliberate.

The Tribunal finds that the actions in this case were deliberate. He was aware that he was acting in opposition and he was aware that his deliberate refusal to act as FRO for OSAA staff members and work with KJ would be damaging for the work of the OSAA.

b. Whether the staff member made full, timely disclosure to a direct or indirect supervisor; whether the staff member followed operational procedures in connection with the misconduct; whether the staff member was self-aware of the conduct

The Tribunal finds that the Applicant failed to disclose the misconduct to his supervisor. The Tribunal finds that the Applicant failed to follow operational procedures in connection with the misconduct. The Tribunal finds that the Applicant was self-aware of the conduct.

relevant information and protective measures following disciplinary procedures taken against the USG .

92. Upon review of the record, the Tribunal finds that the rights were respected throughout the investigation and disciplinary process. The case file shows that the Applicant was informed of the allegations of misconduct, and he had opportunities to respond before the disciplinary action was taken. The Applicant was interviewed by OIOS and asked about material aspects of the matter. Following the interview, the Applicant was given the audio-recording of his interview and was given an opportunity to submit written statements on the topics discussed during the interview. In the Allegations Memorandum, the Applicant was provided with all supporting documentation, was informed of his right to seek the assistance of counsel and was given the opportunity to comment on the allegations against him. The Applicant had an opportunity to provide witness testimony at the hearing before the Tribunal.

93. -
disclosure of the fact-finding report in respect of his complaints against the USG/OSAA, the Tribunal notes that the Applicant, as a complainant under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority), is not entitled to a copy of the fact-finding panel report or its supporting materials.

94.
were respected.

Conclusion

95. In view of the foregoing, the Tribunal rejects the application.

(Signed)

Judge ~~Julius A. J. (a)-5(ppli)-3(c)4(a)~~

Dated this 29th day of October 2024