

. 2021- A -1075

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Counsel for

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JUDGE MARTHA HALFELD, PRESIDING.

1. Mr. Yves P. Nadeau, a former staff member of the Investigations Division of the Office of Internal Oversight Services (OIOS), has appealed against Judgment No. UNDT/2019/168 of the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), which granted his application in part, finding that the Administration's response to his complaint under Section 3.2 of ST/SGB/2008/5 was adequate but untimely; and rejected his request for compensation.

2. On appeal, the United Nations Appeals Tribunal (Appeals Tribunal) partially grants the appeal and modifies the UNDT Judgment in that the Administration's response to Mr. Nadeau's

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7. On 28 August 2015, the Officer-in-Charge of the Management Evaluation Unit (OIC and MEU, respectively) rejected Mr. Nadeau's management evaluation request as not receivable. The MEU noted that a failure by a manager or supervisor to fulfil his/her obligations under Section 3.2 of ST/SGB/2008/5 would not, in itself, constitute prohibited conduct. The MEU further noted that the Director had confirmed to Mr. Nadeau that the matters raised were being considered in the context of Section 3.2 of ST/SGB/2008/5 and that appropriate action would be taken in due course. The MEU concluded that there was thus no administrative decision not to take action on his complaint.

8. By e-mail dated 6 October 2015, the Director reiterated that Mr. Nadeau's complaint was being taken seriously, but he also noted that "in a large bureaucracy such as ours, resolving matters such [as yours] is by no means an easy and straight forward matter". On 8 and 16 October 2015, Mr. Nadeau met with the Director to discuss his case.

9. By e-mail of 16 October 2015, the Acting Head and Assistant Secretary-General of OIOS (ASG/OIOS) requested that he provide suggestions on additional actions to be taken to further improve his work environment and that he discuss these suggestions with his supervisors so that they could let him know of their recommendations.

10. By e-mail dated 2 November 201

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concluded that the ASG/OIOS by simply asking for suggestions on what management steps might be taken was an element that contributed to a response that was "adequate" but untimely.

19. The UNDT exceeded its competence by offering a possible excuse for the Administration's delay in responding to the complaint. The UNDT concluded that the Administration "might have found it difficult to prop

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question before the UNDT; and the ASG/OIOS' e-mail of 16 October 2015, which was a question and which the Receivability Judgment had considered was not a response.

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Director had met with Mr. Nadeau in person on 8 and 16 October and the ASG/OIOS had invited Mr. Nadeau to provide suggestions to further improving his working environment. The UNDT correctly concluded that the Administration had acted in a fair and impartial manner in accordance with Section 3.2 of ST/SGB/2008/5 in addressing the complaint.

26. Mr. Nadeau

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32. In his appeal, Mr. Nadeau argues that the UNDT erred when it found that the Administration's response to his complaint was fair and impartial. He claims that the 27 November 2015 e-mail mentioned in the UNDT Judgment did not address his complaint, as it relates to a later extraneous matter, rather than the one treated in the present case, which concerns the "conduct of any staff member, the working environment in OIOS or anything else for which the USG/OIOS was responsible".

33. The Appeals Tribunal first finds that the mention of the e-mail dated 27 November 2015 at paragraph 33 of the UNDT Judgment was not a determining factor in the finding that the handling of Mr. Nadeau's complaint was adequate. Rather, this e-mail was just one element in a sequence of actions implemented by the Administration when dealing with Mr. Nadeau's complaint. In this regard, the

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Judgment

44. The appeal is partially granted and Judgment No. UNDT/2019/168 is partially modified in that the Administration's response to Mr. Nadeau's complaint under Section 3.2 of ST/SGB/2008/5 was not only untimely but also inadequate. The UNDT