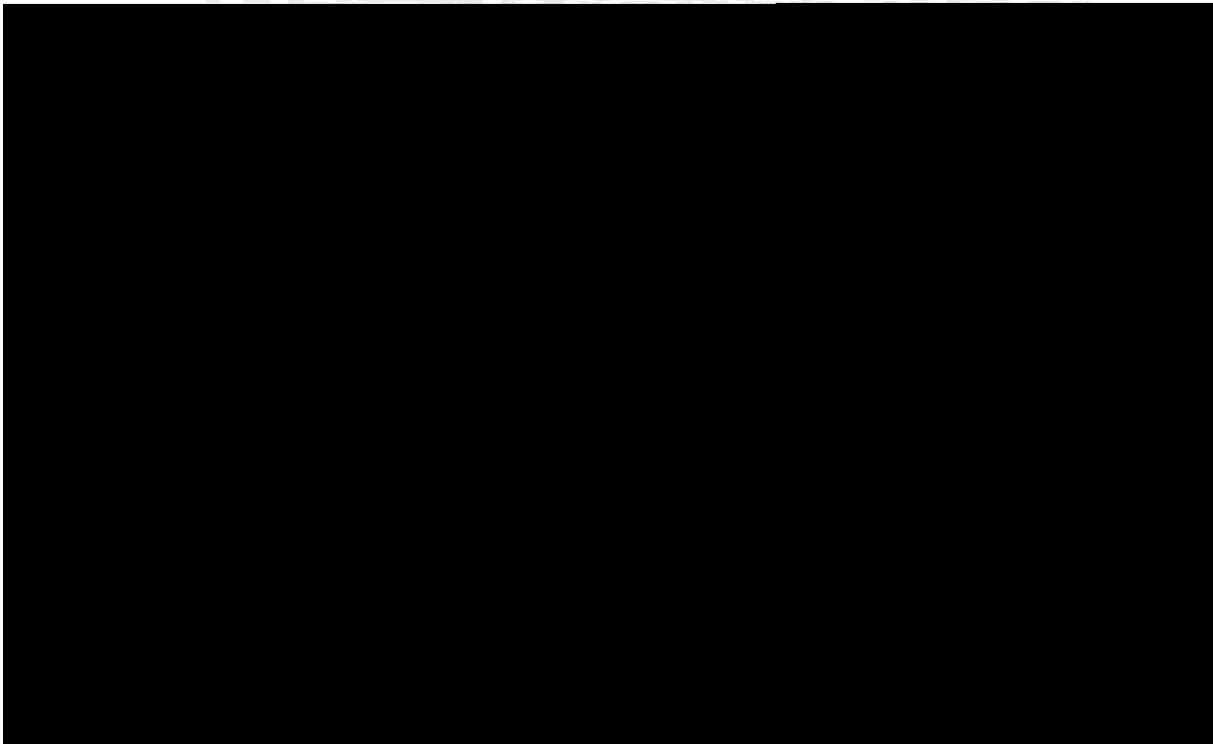


Judgment No. 2016-UNAT-649



Counsel for Ms. Nielsen: Self-represented

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The Secretary-General's Answer

17. The UNDT correctly concluded that Ms. Nielsen's complaint regarding Mrs. A. was not receivable by OAIS, as it was filed after the six-month time limit contained in the 2013 UNFPA Policy and was thus untimely. Ms. Nielsen's complaint was also not receivable by OAIS because the conduct complained of therein failed to meet the prima facie threshold of conduct capable of constituting prohibited conduct under the 2013 UNFPA Policy.

18. The UNDT correctly determined that OAIS' refusal to conduct an investigation into Ms. Nielsen's complaints against Mrs. A. did not result in a breach of Ms. Nielsen's rights. The UNDT properly examined the UNFPA regulatory framework regarding misconduct and reviewed whether OAIS had properly followed the correct procedures. The UNDT's examination did not reveal any discrepancies. As OAIS is not obligated to open a full investigation into every complaint received, it was open to OAIS to determine that there was no need to open an investigation in Ms. Nielsen's case, and, by corollary, the UNDT was correct to find that OAIS had acted in accordance with the 2013 UNFPA Policy and her rights were not breached.

19. Ms. Nielsen has not established any errors warranting a reversal of the UNDT Judgment or Order. Her appeal merely reargues and repeats matters raised before the UNDT, without identifying any errors in the UNDT Judgment, which the Appeals Tribunal has held is impermissible. Further, Ms. Nielsen's complaints about the UNDT Judge only evidence her dissatisfaction with that Judge's findings and conclusions. Ms. Nielsen also raises multiple issues which extend well beyond the scope of the present appeal, which the Appeals Tribunal should dismiss as irrelevant.

20. The Appeals Tribunal should also disregard Annex 16 to Ms. Nielsen's appeal as it was not produced before the UNDT. Further, Annex 16, which Ms. Nielsen has filed in multiple cases, relates to an allegation she made in July 2013 through the Investigations Hotline regarding "work problems" which were unrelated to the various formal allegations she submitted in August 2014. The fact that Ms. Nielsen had been in contact with OAIS in July 2013 is not in itself sufficient for her subsequent harassment complaint to be considered receivable by OAIS.

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the matters contained therein are relevant to the issues in this appeal, is essentially an attempt by Ms. Nielsen to supplement arguments already made in the course of her appeal submissions.

27. Furthermore, her motion to have the Appeals Tribunal remove immunity from certain staff members, should her appeal fail, is misconceived as such a request is entirely outside of the mandate of the Appeals Tribunal.

28. Accordingly, both motions are denied.

Ms. Nielsen's appeal of UNDT Order No. 133 (GVA/2015)

29. In the context of reviewing four applications filed by Ms. Nielsen, including the application which is the subject matter of the present appeal, the Dispute Tribunal by Order No. 133 (GVA/2015) determined that as "all relevant facts transpire from the documents on the files and only legal questions have to be assessed ... these cases may be decided on the papers, without further hearings or submissions from the parties".⁶

30. Ms. Nielsen complains that the Dispute Tribunal exceeded its jurisdiction in disposing of her application without embarking on an oral hearing.

31. Pursuant to Article 16(1) of the Dispute Tribunal's Rules of Procedure, it is for the judge hearing the case to decide whether an oral hearing is to be held. The Appeals Tribunal has consistently held that the Dispute Tribunal is afforded wide discretion in matters of case management and the Appeals Tribunal will not lightly interfere in such matters.⁷ In the present case, we are not satisfied that Ms. Nielsen has advanced compelling grounds to persuade us that the Dispute Tribunal exceeded its jurisdiction in restricting its judicial review to a papers only assessment. Accordingly, her appeal against UNDT Order No. 133 (GVA/2015) is dismissed.

Ms. Nielsen's appeal of Judgment No. UNDT/2015/062

32. The decision which Ms. Nielsen contested before the Dispute Tribunal was the decision of OAS not to trigger an investigation into her complaints against a work colleague, Mrs. A. From its assessment of the case file the Dispute Tribunal determined that Ms. Nielsen's

⁶ Nielsen v. Secretary-General of the United Nations , Order No. 133 (GVA/2015), para. 6.

⁷ Staedtler v. Secretary-General of the United Nations , Judgment No. 2015-UNAT-546, para. 35, citing Bertucci v. Secretary-General of the United Nations , Judgment No. 2010-UNAT-62, para. 23.

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that occurred prior to 22 September 2013 as confirmed by the Applicant in a phone call with OAIS.

... Therefore, following a preliminary review, OAIS concluded that a full investigation was not warranted on the basis of the documentation received and in light of the requirements of the Harassment, Sexual Harassment and Abuse of Authority Policy.

... On 10 September 2014, OAIS informed the Applicant, via phone, that her case would be submitted to the Director of OAIS for a final decision. [O]n the same occasion, OAIS informed the Applicant that the case will be referred to the Director of OAIS for closure, on the basis of the reasons indicated above. The case was subsequently reviewed and formally closed by the Director[,] OAIS. The Applicant was informed of that decision via email on 16 September 2014 ... according to the requirements of the Harassment, Sexual Harassment and Abuse of Authority Policy.

... [T]he OAIS decision was then memorialized in an internal document -

38. It appears to be the case that the offer made by the Respondent to disclose the document was not taken up by the UNDT. It is the view of the Appeals Tribunal, given that the decision being challenged by Ms. Nielsen was the decision of OAIS not to launch a full investigation into the complaint, that the most prudent course of action for the Dispute Tribunal for the purpose of discharging its statutory function of judicial review of that decision would have been to require disclosure of OAIS' written record, as referred to by the Respondent in his reply to the UNDT application. Absent any indication on the face of the Judgment that the written record of OAIS' preliminary investigation and conclusions

41. In her appeal, Ms. Nielsen raises a myriad of other matters which, in the view of the Appeals Tribunal, do not have any bearing on Judgment No. UNDT/2015/062. Accordingly, we do not propose to address such matters in the course of this Judgment save to reject such pleas.

42. Pursuant to Article 2(1) of the Appeals Tribunal Statute, our appellate function is to ascertain whether it has been established that the Dispute Tribunal:

- (a) Exceeded its jurisdiction or competence;
- (b) Failed to exercise jurisdiction vested in it;
- (c) Erred on a question of law;
- (d) Committed an error in procedure, such as to affect the decision of the case; or
- (e) Erred on a question of fact, resulting in a manifestly unreasonable decision.

43. Save for the procedural deficiency the Appeals Tribunal has identified in relation to the failure of the UNDT to procure the written record of OASIS' preliminary review of Ms. Nielsen's complaint against Mrs. A., none of the arguments put forward by Ms. Nielsen satisfies the requirements of Article 2(1) of the Appeals Tribunal Statute and they are hereby rejected.

44. We would add one further comment. We note the pejorative language and name-calling engaged in by Ms. Nielsen to describe alleged wrongdoings by her erstwhile colleagues. Such language is not appropriate and our warning in this regard should be well heeded by Ms. Nielsen.

Judgment

45. The appeal is allowed and we remand the case to the Dispute Tribunal for reconsideration.

