



JUDGE DEBORAH THOMAS -FELIX , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2016/038, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 22 April 2016 in the case of Gallo v. Secretary-General of the United Nations . On 21 June 2016, the Secretary-General filed the appeal. On 16 August 2016, Mr. Gallo filed hi

... By memorandum dated 17 January 2014, [Mr. Gallo]'s first reporting officer requested the Director of ID/OIOS to initiate a formal investigation into the matter in accordance with sec. 5.11 of ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority).

... By memorandum dated 31 January 2014, the then Under-Secretary-General of OIOS ("USG/OIOS") appointed a fact-finding panel to investigate the first reporting officer's report against [Mr. Gallo] for prohibited conduct under ST/SGB/2008/5. On the same date, by memorandum, the then USG/OIOS informed [Mr. Gallo] of the initiation of the fact-finding investigation and the establishment of a fact-finding panel.

...

... On 31 March 2014, the fact-finding panel submitted its investigation report concluding that [Mr. Gallo]'s actions and behavior towards one of his OIOS colleagues constituted harassment under sec. 1.2 of ST/SGB/2008/5.

... By a memorandum dated 9 April 2014, the USG/OIOS forwarded the fact-finding panel's investigation report to the Assistant Secretary-General, Office of Human Resources Management ("ASG/OHRM") for her consideration of disciplinary action against

disciplinary measures and procedures) and of his recommendation for a written reprimand to be issued against [Mr. Gallo].

... On 16 March 2015, [Mr. Gallo] separated from service with the United Nations Secretariat following the expiration of his fixed-term appointment.

... By letter dated 1 April 2015, the Deputy Secretary-General, on behalf of the Secretary-General, informed [Mr. Gallo] that the Secretary-General had accepted the recommendation of the then Director of DHR /UNICEF and that “the current letter will serve as a written reprimand, issued pursuant to Staff Rule 102(b), which shall be placed in [Mr. Gallo’s] Official Status File”.

... [Mr. Gallo filed an] application [with the UNDT] on 2 July 2015.

3.

5. The UNDT rejected Mr. Gallo's requests to rescind the decision finding him guilty of misconduct, since it found that no decision was taken in that regard, and to grant him financial compensation, since it found that the record did not demonstrate any economic loss suffered.⁷

Submissions

The Secretary-General's Appeal

8. The UNDT erred in law when it held that the reprimand, issued after separation, was unlawful and that a written reprimand had the effect of a disciplinary sanction, thereby erroneously equating a reprimand to a disciplinary sanction. Both the Staff Rules and relevant jurisprudence are clear that a written reprimand is, by statutory definition, not a disciplinary measure and does not amount to a sanction. Its character and effect does not depend on the context in which it is issued as Staff Rule 102(b)(i) does not distinguish between a written reprimand issued by management in the regular course of a staff member's service, and one issued after the completion of a disciplinary process.

9. The UNDT further erred in law when it held that a written reprimand could be issued and placed in a staff member's file only while the staff member was in active service of the Organization. Such a conclusion would mean that actions by a staff member in his or her last days of service could not be recorded unless done so prior to the staff member's separation, and that the Secretary-General's broad discretion and authority in administrative matters could be obviated by a staff member simply resigning or otherwise separating from the Organization. There is no requirement in the Staff Regulations or Rules that conditions the Secretary-General's discretionary authority to issue a written reprimand as a non-disciplinary measure pursuant to Staff Rule 10.2(b)(i) on the existence of an ongoing appointment; nor is there any jurisprudence requiring a subsisting employment relationship for purposes of administrative non-disciplinary measures. Such a requirement would render nugatory those standards of conduct that survive active service (e.g., ongoing confidentiality obligations per Staff Regulation 1.2(i), the post-employment restrictions set forth in ST/S GB/2006/15, etc.); it also would prevent the Secretary-General from dealing with the consequences of such after-service conduct.

⁷ Ibid., paras. 78 and 80.

Staff Rule 10.2 provides in clause (a) for a spectrum of disciplinary measures which can be instituted against staff. It also provides for the imposition of non-disciplinary measures:

Staff Rule 10.2

(b) Measures other than those listed under staff rule 10.2(a) shall not be considered to be disciplinary measures within the meaning of the present rule. These include, but are not limited to, the following administrative measures:

(i) Written or oral reprimand

15. Accordingly, there is no dispute that the Secretary-General has the discretionary authority to issue a non-disciplinary administrative measure in the form of a written reprimand as provided for under Staff Rule 10.2(b)(i); this written reprimand is not a disciplinary measure or sanction even when issued following a disciplinary proceeding.

16. The UNDT erred, however, when it went on to conclude that a written reprimand could

18. Second, we agree with the Secretary-General that this reasoning, were it to prevail, would render nugatory those standards of conduct (e.g., confidentiality obligations pursuant to Staff Regulation 1.2(i), amongst ot

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Dated this 28th day of October 2016 in New York, United States.

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Lussick

(Signed)

Judge Halfeld

Entered in the Register on this 20th day of December 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar