

Introduction

1. By application filed with the Tribunal on 28 January 2011, the Applicant contests the decision rejecting his request for an investigation into his allegations of harassment, discriminatory treatment and abuse of authority against the Chief Aviation Officer and the former Chief of Mission Support, United Nations Assistance Mission for Iraq (“UNAMI”).

2. He requests the Tribunal to find that his rights were violated by failing to afford his complaint full and fair consideration and to order that an impartial inquiry be conducted.

Facts

3. The Applicant joined the United Nations in October 1991. He served in various peacekeeping missions and, on 19 February 2007, started serving at UNAMI, as a Fuel Supply Assistant at the FS-3 level under a fixed-term appointment. His contract, which was initially for six months, was renewed on several occasions.

4. On 19 March 2008, a performance improvement plan was made for the Applicant.

5. By memorandum dated 20 October 2008, the Chief of Mission Support, UNAMI, informed the Applicant that his function was being abolished in the budget for 2009 and that he would be reassigned, together with his post, to the Movement Control Unit, in Baghdad, Iraq.

6. On 28 August 2008, another performance improvement plan was prepared for the Applicant.

7. On 9 December 2008, the Applicant’s supervisor sent him an email raising shortcomings in his performance. In addition, the Applicant’s team leader recorded in an email dated 27 January 2009 that his performance for the previous three months had been inadequate. In a memorandum dated 29 January 2009, the Administration noted that the Applicant had acknowledged his shortfalls and

showed interest in being part of the team. On 17 March 2009, a performance improvement plan was again put into place for the Applicant.

8. In accordance with the rotation plan for April 2009 of the Baghdad International Airport, where the Applicant was discharging his duties, he was due to leave Iraq for rest and recreation (“R&R”) in the second half of the month, with a return date on 30 April 2009. On 14 April 2009, the Applicant made a request through the matrix system for R&R from 23 to 30 April 2009 and annual leave from 1 to 4 May 2009.

9. This request was approved by the Applicant’s direct supervisor, but refused, on 15 April 2009, by his second reporting officer, i.e., the Chief Aviation Officer, on the ground that the Applicant was required to make progress on his special performance monitoring and associated training programme.

10. The Applicant wrote to the Chief Aviation Officer stressing that he had requested annual leave in order to attend to his mother, who was in a serious medical condition. In reply, the Chief Aviation Officer reiterated, on 16 April 2009, that he would not approve the leave request as submitted, while stating that the Applicant would receive full cooperation if he wished to use some of the uncertified sick leave balance available for compassionate purposes, as provided for in former staff rule 106.2(c). He advised the Applicant to consult with the Human Resources Section for this matter.

11. The Applicant did not do so; he took his leave as planned, with the concurrence of his first reporting officer. He decided to relocate his mother to Karthoum on 23 April 2009, after she had spent two months in Amman awaiting to undergo surgery. The Applicant returned to work on 5 May 2009.

12. On 25 May 2009, the Applicant was called to Kuwait by his supervisor to discuss his performance. On the same date, his e-PAS for the period 2007-2008 was finalized, rating his performance as “partially meets performance expectations”, and on the following days some discussions took place between the Applicant and his hierarchy on performance matters. He returned to Baghdad on 31 May.

13. On 3 June 2009, the Chief Aviation Officer informed the Applicant that he would be transferred to Kuwait. On 7 June, he travelled to Amman for his last R&R.

14. The Applicant was informed, by memorandum from the Chief of Mission Support, dated 9 June 2009, that his contract, which was to expire on 18 July 2009, would not be extended due to unsatisfactory performance. It was pointed out that efforts had been exerted to absorb the Applicant after his initial post had been declared redundant, but he had not cooperated to perform satisfactorily.

15. The Applicant's mother died on 14 June 2009. As he learnt it upon his arrival to Kuwait on 15 June, he intended to obtain uncertified sick leave for family-related emergencies in order to travel for the burial; however, he could not travel as his passport had expired and he had to wait until 21 June for it to be renewed. He was on annual leave until that date and eventually left for Sudan on 22 June 2009. He was placed on sick leave until 28 June.

16. By memorandum dated 17 June 2009, the Applicant advised UNAMI that he wished to rebut his e-PAS for 2007-2008.

17. On 13 July 2009, the Applicant's appointment was extended until 18 August 2009 on humanitarian grounds.

18. On 23 July 2009, as the Applicant was making attempts to be transferred to a position as Movement Control Assistant in Nairobi with the United Nations Operations in Somalia ("UNOSOM.ar

21. On 3 August 2009, the Applicant submitted to the Dispute Tribunal a request for suspension of action, during the pendency of management evaluation, regarding the decision not to renew his contract, which was granted by order dated 13 August 2009 (UNDT/2009/008).

22. The Applicant's contract was extended several times for short periods through 30 June 2010.

23. On 17 August 2009, the Applicant initiated the rebuttal of his e-PAS for 2008-2009, which had been issued two weeks earlier, rating his performance as "partially meets performance expectations".

24. On 14 September 2009, the rebuttal panel rendered its final report regarding the Applicant's e-PAS for 2007-2008, concluding, *inter alia*, that the Applicant "could not exactly understand or totally agree with work expectations from the [first reporting officer] due perhaps partly to his new arrival in UNAMI ...". His rating was upgraded to "fully satisfactory performance".

25. On 17 September 2009, the same panel issued the final report on the Applicant's rebuttal of his 2008-2009 e-PAS, which

and abuse of authority against the Chief Aviation Officer and the former Chief of Mission Support, UNAMI, under the Secretary-General's bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) and requested that a formal investigation be conducted.

29. After he obtained a fully satisfactory evaluation for the period from January to March 2010, dated 27 April 2010, on 30 June 2010 the Applicant's appointment was renewed for one year.

30. By memorandum dated 1 July 2010, the Special Representative of the Secretary-General for Iraq replied to the Applicant's complaint for harassment and discrimination stating that his allegattakMvb,wbHvHHbHHSrR-v,wccYSeRkFvwYyHcSsR] T,M,-MFS

35. By Order No. 51 (GVA/2012) issued on 8 March 2012, the parties were convened to an oral hearing on 14 March 2012, to wh

d. The Applicant had an exemplary record of service before encountering difficulties with his most recent supervisors. The Applicant's

c. As regards the request for annual leave following R&R, it was not approved by the Applicant's second reporting officer due to the exigencies of service. His absence would have caused a disruption to the operation requirements at Baghdad International Airport and the need to assign

enforceable rights for staff members on the matter. Specifically, section 5.14 of the bulletin provides:

Upon receipt of a formal complaint or report, the responsible official will promptly review the complaint or report to assess whether it appears to have been made in good faith and whether there are sufficient grounds to warrant a formal fact-finding investigation ...

41.

abuse, demean, intimidate, belittle, humiliate or embarrass another or which create an intimidating, hostile or offensive work environment”. Hence, the actions complained about by the Applicant cannot be deemed to fall beyond the scope of ST/SGB/2008/5 for the sole reason that they arose in the context of work performance or other work-related issues.

45. Having concluded that the bulletin was applicable to the facts at issue, and with regard to the Applicant’s request that an investigation be conducted, the Tribunal must now determine whether the decision not to undertake such an investigation in his case was in violation of the Applicant’s rights.

46. The above-cited section 5.14 provides for two general criteria for the purpose of launching a fact-finding investigation,

the negative assessment given to prospective supervisors when the Applicant was seeking to move to another peacekeeping mission.

49. Concerning his transfers, the Applicant was first reassigned from Kuwait to the Movement Control Unit in Baghdad on 20 October 2008. It is worth noting that, as stated in the memorandum notifying the Applicant of this measure, the purpose of it was to keep him on board after his post had been abolished in the budget for the next year. Therefore, his first transfer appears rather as a measure taken in the interest of the Applicant than as an act of harassment. Then, on 3 June 2009, the Chief of Mission Support decided to transfer him to Kuwait, and, the Applicant claims, he thereby had his R&R cycle disrupted. This decision, nevertheless, followed a number of incidents and statements which made evident the mutual dissatisfaction between the Applicant and his hierarchy while he was serving in Baghdad. Besides, the R&R entitlement of a staff member is not a consideration that a supervisor must take into account in deciding whether to assign a staff member to a different duty station. The Tribunal thus fails to see any negative intent in this second reassignment. Lastly, by his third transfer, the Applicant returned to the Fuel Supply Assistant position that he held prior to his first reassignment. The memorandum dated 6 October 2009 informing the Applicant of this transfer stated that he was given “another opportunity to prove [him]self in a function which [he was] familiar with and for which [he had been] recruited”. It transpires that this constituted an attempt to assign the Applicant to a position which best fitted his skills, even if this arrangement required that a post be loaned from a different section.

50. Regarding the refusal to approve the Applicant’s five-day annual leave request, it must be recalled that, according to former staff rule 105.1(b)(iii), “[a]ll arrangements as to leave shall be subject to the exigencies of service, which may require that leave to be taken by a staff member during a period designated by the Secretary-General ...”. The Applicant’s second reporting officer was therefore acting within his sphere of competence and, furthermore, he provided plausible reasons for his denial, i.e., the repercussions on the rotation calendar of the Applicant’s unit and the need to follow the measures put in place to address his performance shortcomings. More importantly, as soon as the Applicant explained

57. Accordingly, the decision not to undertake further inquiries cannot be deemed in breach of the Applicant's terms of appointment.

58. The Tribunal is mindful that the period going from the end of 2008 to the beginning of 2010 was grueling for the Applicant considering, in particular, the personal loss that he endured. However, in the Tribunal's view this trying situation was not the result of a conduct amounting to harassment, discrimination or abuse of authority by his supervisors at the time.

Conclusion

59. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

(Signed)

Judge Thomas Laker

Dated this 19th day of April 2012

Entered in the Register on this 19th day of April 2012

(Signed)

René M. Vargas M., Registrar, Geneva