



Introduction

1. The Applicant, a former staff member of the United Nations Environment Programme (UNEP), filed complaints of harassment on 9 June 2006 and 14 May 2007 against Mr. Ahmed Djoghlaif, Executive Secretary (ES), Secretariat of the Convention on Biological Diversity (SCBD).

2. An Investigation Panel subsequently concluded that the allegation of harassment was substantiated. By a letter dated 4 June 2009 (the Contested Decision) from Ms. Catherine Pollard, the Assistant Secretary-General for Human Resources Management (ASG/OHRM), thanked the Applicant for bringing the issue to the attention of the Administration and informed him that a decision had been made to take administrative action against Mr. Djoghlaif.

3. In light of the findings of the Investigation Panel, the Applicant is contesting the administrative decisions to merely thank him and to simply take administrative action against Mr. Djoghlaif. He submits that while the Contested Decision recognised that Mr. Djoghlaif had violated United Nations rules, it did not address his professional and personal losses resulting from the abuse and harassment perpetrated by Mr. Djoghlaif. He submits that there should have been more concrete action by the Administration against Mr. Djoghlaif and that the harassment suffered by him should have been addressed or remedied appropriately.

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8. The Applicant complained that Mr. Djoghlaф systematically harassed and consistently built up a constructed dismissal case against him . Thus, the working relationship between the Applicant and his superior was strained at best.

9. There was a similar conflict regarding the circulation of a draft audit report prepared by the Office of Internal Oversight Services (OIOS) by Mr. Djoghlaф. The draft audit contained unfavourable allegations against the previous

11. The Applicant filed a complaint of harassment on 9 June 2006 (The First Complaint) with UNEP senior management, including the Deputy Executive Director of UNEP, the then ASG/OHRM and the Director of the Investigations Division, OIOS. The complaint included in depth details of the Applicant s grievance. The Applicant claimed that my supervisor, Mr. Ahmed Djoghlaif has consistently and aggressively *harassed* me since he took over his duties and has systematically deprived me of my authority and functions as stipulated by my job description. The Applicant asserted that this course of action was a form of retaliation in response to the Applicant s (a) refusal to violate UN rules at his request and (b) association with the previous administration. The Applicant requested that these matters be thoroughly investigated and actions instituted to protect his rights as a staff member.

12. UNEP Administration reacted on 15-17 August 2006 by sending Mr. Suleiman Elmi, Chief, Human Resources Management Services (HRMS) at the United Nations Office at Nairobi (UNON), to Montreal to assess the general situation at the SCBD. His asserted purpose was to: (i) try to calm the situation; and (ii) make recommendations for the resolution of the situation.

13. Mr. Elmi concluded in a report dated 28 August 2008 that the crux of the problem in CBD was the conflict between Mr. Djoghlaif and three staff members, including the Applicant. He also concluded that the Applicant was exerting negative influence on other staff members. According to Mr. Elmi:

Mr. Djoghlaif has started dealing with the concerns of the other staff and is aware of the impact of his management style on some of the staff members. Most of the staff believe in his vision and he

actively looking for a suitable position for you before the end of November. I will inform you on the offer as soon as possible.

Pending your reassignment, the ED would expect you to undertake an assignment, working from home [].

15. By a memorandum dated 16 November 2006, Mr. Buonajuti informed the Applicant that he was being offered a one-year extension on his contract by the Executive Director of UNEP (ED/UNEP) and reassignment to the Division of Environmental Law and Conventions (DELIC) in Nairobi effective 01 December 2006. In another memorandum dated 17 November 2006, Mr. Buonajuti stated that,

[y]ou have applied for the Deputy Director position in the Division of Environmental Law and Conventions (DECL) and the offer of a one-year extension by the Executive Director is made without prejudging the results of the competition. If successful, you will be appointed to the Deputy position and if not, you will remain in the position offered to you, if you accept it.

16. The Applicant sent some concerns and clarifications regarding his new post to Mr. Buonajuti on 21 November 2006. Following a reply from the OED on 27 November, clarifying the position of UNEP, the Applicant responded that he accepted the reassignment offer on 7 December 2006. This offer was accepted according to the Applicant, after protracted discussions and resistance on his part.

17. On 14 May 2007, the Applicant complained once again from Nairobi [The Second Complaint], this time to the Secretary-General, as his complaint of June 2006 was never acknowledged and a proper investigation was never established.

18. Accordingly, on 18 July 2007, Mr. Achim Steiner, the ED/UNEP informed the Applicant that a Panel would be established under ST/AI/371 to investigate allegations made by him against Mr. Djoghlaif.

19. The Investigative Panel (IP) was established two months later to (i) provide the Executive Director of UNEP with a factual basis for a decision whether or not to pursue the allegations of the staff member and former staff

members against the Executive Secretary of the CBD as a disciplinary matter and (ii) determine whether or not the allegations of the Executive Secretary against the staff member are to be pursued as a disciplinary matter.

20. The report of the Panel was issued on 22 October 2007. The Panel concluded that ample evidence is available to substantiate the accusations of inter alia harassment, abuse of authority, unfair treatment and violation of privacy by Mr. Djoghla. This report was not disclosed to the Applicant.

21. On 26 February 2008 the Applicant was separated from service following the non-renewal of his contract.

22. Mr. Steiner informed the Applicant in October 2008 that the IP report had been submitted to Ms. Pollard for her consideration and further action as appropriate. On 4 June 2009, Ms. Pollard informed the Applicant that administrative action was warranted against Mr. Djoghla. The Applicant was thanked for his efforts:

OHRM reviewed the entire dossier of this case, including the investigation report, the supporting documentation and Mr. Djoghla's comments on the matter. The record indicates that Mr. Djoghla did not act in a manner consistent with the standards of conduct expected of senior officials of the Organisation and, accordingly, administrative action has been taken against him. Thank you for your assistance and cooperation in this matter, and in particular, for bringing the matter to the attention of the Administration and diligently pursuing it.

23. On 1 July 2009 the Applicant submitted a request to Ms. Angela Kane, Under-Secretary-General for Management, for a management evaluation of the Contested Decision. According to the Applicant, while the Contested Decision recognised that Mr. Djoghla had violated United Nations rules, it did not address his professional and personal losses resulting from the abuse and harassment perpetrated by Mr. Ahmed Djoghla and the final loss of [his] job. The Applicant contested the lethargy with which the Administration responded to his complaints, the procedures employed by the Administration (which lacked transparency, and were ad hoc in manner), the lack of adherence to procedural guidance of the statutory framework (in particular administrative instructions), the

lack of restraint on abuse and harassment and finally the loss of his job due to mismanagement of his case .

24. The Management Evaluation Unit (MEU) responded on 14 August 2009 with its deliberation. The MEU decided to evaluate the Applicant s case in light of aspects of his case forming new grievances directly emanating from Ms. Pollard s 4 June 2009 letter; or grievances which were the subject of the findings and conclusions of the IP. The MEU concluded that the Applicant s complaint of constructive dismissal could not be upheld. The MEU observed that the Applicant was subject to inordinate delay and thus recommended that he be compensated with three months net base salary at his current level. Finally, the MEU concluded that their current letter would serve to inform the Applicant that the IP had found Mr. Djoghla f s allegations against him lacked merit and therefore these allegations had been dismissed and the Applicant was henceforth exonerated of any wrongdoings in his interaction with Mr. Djoghla f.

25. On 11 November 2009, the Applicant submitted an application to the Dispute Tribunal (the Tribunal).

Applicant s submissions

26. The management evaluation: (a) does not discuss merits of Applicant s complaints (b) does not state that Mr. Djoghla f was responsible for harassment and abuse and (c) does not remedy the harm caused to Applicant.

27. In relation to the first complaint, the Applicant asserts that the procedure followed did not constitute a formal investigation and did not respond to the complaint of 9 June 2006. He also asserts that Mr. Elmi did not provide any evidence for the statements in his report.

28. The Applicant clarified his submission to the Court on 4 November 2010.

(iii) whether the decision letter was fair, and fully addressed the Applicant's rights and legitimate interests, and (iv) whether the Respondent provided appropriate remedies for the Applicant.

Respondent's submissions

29. The following issues are relevant: (a) the rights of a staff member complaining of harassment in 2006/2007 and whether the contested 4 June 2009 letter violated any of these rights, (b) whether the procedural rights of the Applicant were violated by the conduct of investigation and subsequent disciplinary case concerning Mr. Djoghlaif, and finally (c) whether the Applicant's rights as a former staff member were violated by the outcome of the management evaluation.

30. According to ST/IC/2005/19 and ST/SGB/2005/21, while an Applicant has a right to complain, his/her assertions do not have to be accepted by the administration. Thus, the UN is not empowered under any particular statutory provision to make awards of compensation other than in the context of appeals. While a complainant can appeal against an administrative decision, the decision whether to investigate a case or not is not justiciable.

31. Similarly, ST/SGB/2008/5 is not applicable. Even if the Tribunal does find it applicable, there is no provision for compensation therein, excluding a reference to compensation in the context of an appeal under Ch. XI of Staff Rules. Thus, the Applicant has no right to receive an assessment from the Administration whether misconduct of another staff member is proven, and neither is he entitled to

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40. Thus, the Administration has a duty to deal seriously with any complaint of misconduct, and not brush any substantial findings under the carpet.

41. The Applicant initially submitted a complaint of harassment on 9 June 2006 to UNEP senior management, including the Deputy Executive Director of UNEP, the then ASG/OHRM and the Director of the Investigations Division, OIOS. UNEP Administration did not react until mid-August 2006 and when it did act, it did so in an informal manner in that the purpose of the ensuing visit of Mr. Elmi was merely to calm the situation and to make recommendations for resolution of the problem (i.e. the conflict in CBD).

42. The ensuing report clearly indicates that Mr. Elmi's focus was on the general discord amongst CBD staff and had nothing to do with the Applicant's complaint specifically. In this respect, the Tribunal notes that apart from a cursory mention at the beginning of the report that Mr. Elmi had met with the Applicant and two other staff members who had submitted appeals/complaints against Mr. Djoghlaif, no mention was made of the Applicant's complaint of harassment and neither was it addressed anywhere within Mr. Elmi's 5-page report. The Tribunal finds, therefore, that Mr. Elmi's visit to CBD did not fulfill the Administration's obligations under ST/AI/371 because the visit did not contend with the Applicant's complaint of 6 June 2009.

43. However, the Applicant filed a complaint again on 14 May 2007, (the second complaint). This time the Administration responded promptly by establishing an Investigatory Panel under ST/AI//371. Although the Panel made findings for the Applicant, there was no mention of any kind of curative action for the Applicant from the Administration.

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47. Following the investigation, the report of the IP was forwarded to the

protected under ST/AI/2008/5, which refers to prohibited conduct . Additionally, there is case law, which is instructive on the specific point of harassment.

50. Misconduct in the form of harassment is a serious disease which can spread like cancer throughout an organisation if not properly checked. Thus, this Tribunal finds it imperative that misconduct should be appropriately responded to and addressed. The Tribunal considers that General Assembly Resolution 63/253 establishing the UNDT promulgates the imperative for a system of justice which is consistent with the relevant rules of international law and the principles of the rules of law and due process to ensure respect for the *rights and obligations* of

of individuals or otherwise abuse the power and authority vested in them.

57. Staff rule 101.2(d) provided:

Any form of discrimination or harassment, including sexual or gender harassment, as well as physical or verbal abuse at the workplace or in connection with work, is prohibited.

58. In view of the fact that the Organization's rules in force prior to 1 March 2008 specifically prohibited discrimination or harassment, including sexual or gender harassment, as well as physical or verbal abuse, it is incongruous for the Respondent to argue that the Organization did not have the concomitant responsibility to protect its staff from exposure to prohibited conduct or to provide effective remedies solely because SGB/2008/5 had not as yet been promulgated. Given that the philosophy underlying ST/SGB/2008/5 is identical to ST/SGB/2005/21 the Tribunal holds that for the purposes of interpreting the previous rules ST/SGB/2008/5 is relevant.

59. Consequently, the Tribunal concludes that prior to 1 March 2008 the obligation of the Administration vis-à-vis a complainant in circumstances where the allegations of misconduct contained in the complaint had in fact been substantiated by the investigation is now enshrined in paragraph 2.2 of SGB/2008/5, which calls for preventive measures and the provision of effective remedies when prevention has failed.

60. Article 1.3 of the Charter of the United Nations enjoins the Organisation to promote and encourage respect for human rights. Compliance with the international human rights norms and the interpretation of the rules and regulations of the Organisation in accordance with international standards would therefore mean that a staff member has the right to work under the terms and conditions he agreed to and is entitled to just conditions of work and to *protection against unfair dealings in the course of his employment*.

61. According to the case of judgment 1189 of the former United Nations ..7(n6(t)]TJ ta9()]ita

administrative decision of the type giving rise to a right to appeal (Emphasis added). The Tribunal in that case held that it was unfair to allow review by the then Joint Appeal Board (JAB) but then to refuse to implement findings on a technicality (Para V). This Tribunal finds that the Administration was under a duty to afford the Applicant a remedy in response to the findings of harassment.

62. The right to an effective remedy is well documented in international human rights instruments. According to Article 2(3)(a) of the International Covenant on Civil and Political Rights, any person whose rights or freedoms as herein recognized are violated *shall have an effective remedy*, notwithstanding

65. Thus, the breadth of possible remedies that may be granted includes, but is not limited to monetary compensation, rescission and injunctive or protective measures.

Whether the remedies identified above were provided to the Applicant in light of findings and conclusions of the Investigation Panel

66. The Tribunal will review the response of the Administration to determine whether they have sufficiently remedied the wrongs suffered by the Applicant.

67. The judgment thus far has highlighted the fact that the Applicant has been proven to have been subjected to a wrong in particular, harassment. This fact was established by the Investigation Panel, which concluded that there is ample evidence to substantiate the accusations of *inter alia* harassment, abuse of authority, unfair treatment and violation of privacy, and later accepted by both OHRM and MEU.

68. The remedies afforded to the Applicant under the Administrative decision provided by OHRM included a promise of administrative action and thanks for his efforts. Was the response of Ms. Pollard thanking the Applicant for his efforts an effective remedy? The Tribunal does not consider these remedies adequate.

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regulations and to ensure protection of the values and principles concerning equal rights and protection against discrimination, enshrined in the Charter (see art. 1.3) and several international instruments When basic fundamental rights are at stake, a failure to afford *adequate consideration and protection* may be an aggravating, but not a punitive, factor. (Emphasis added)

75. The Tribunal took into account the passage of time in progression of the case to hold that the harm done to the Applicant justified a commensurate award. The Tribunal held that the appropriate compensation for the failure to consider the Applicant's complaint and for the emotional distress he suffered was USD40,000.¹⁰

76. In light of the foregoing and as a consequence of the Applicant's separation from service, the only effective remedy left for the Tribunal to grant is monetary compensation for the breach of rights he has suffered.

Conclusion

77. The Tribunal concludes that the response of the Respondent thus far has been inadequate and inappropriate in light

Judgment

80. In light of the foregoing, the Tribunal orders the Respondent to pay the