Introduction

1. The Applicant, a former team leader and investigator at the P-4 level with the Office of Internal Oversight Services (OIOS), contests the Secretary- failure to act in accordance with art. 3.2 of ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) with respect to a complaint that he submitted on 18 February 2015. The application was filed on 23 November 2015.

2. The present case was initially assigned to Judge Ebrahim-Carstens. Upon the Respondent s claim that the application was not receivable, and after undertaking various case management steps, by Judgment No. UNDT/2018/052 on receivability dated 25 April 2018, Judge Ebrahim-Carstens held that the application was receivable.

3. In response to Judge Ebrahim-Carsten s subsequent orders, the Respondent informed on 6 August 2018 tha The [p]arties have not successfully engaged in .

4. On 30 June 2019, Judge Ebrahim- s tenure with the Dispute Tribunal ended. The following day (on 1 July 2019), the case was reassigned to the undersigned Judge.

5. On 8 October 2019, the Applicant filed a motion for stay of proceedings to discuss an informal settlement of the present case. Considering the previous submissions of the Respondent andm0 g0 G[(the)-7( )-249(S)-3(e)4(c)-5(re)7(tar)-14(y)] TJET0 0.[(dis)]

6. After the Tribunal had issued various case management orders, the parties filed their closing statements as follows: 20 October 2019 (the Applicant), 11 November 2019 (the Respondent), and 18 No

paragraph 3.2 of ST/SGB/2008/5. Rest assured that your complaint is being taken seriously and that appropriate action will be taken in due course .

12. On 28 August 2015, the Officer-in-Charge of the Management Evaluation Unit (the MEU) rejected the Applicant s management evaluation request

and 16 October 2015 to discuss and to seek to resolve the Applicant s concerns. In addition, the then ASG/OIOS engaged with the Applicant and asked him to identify specific suggestions to further improve his work environment. The ASG/OIOS also requested the Applicant to discuss these suggestions with his supervisors and let the ASG/OIOS know of their recommendations. Th s only suggestions were: a divisional retreat for staff of the OIOS Investigations Division, an external audit of all staffing actions within OIOS during the mandate of the former USG/OIOS and the monthly publication of the Investigations Division staffing table. The Applicant made no suggestions relating to his own duties or responsibilities, reporting lines or working arrangements, or similar matters that could reasonably be expected to impact his work environment, and the Organization continued its efforts to address the s dissatisfaction well after the filing of the application.

Consideration

The substantive issues of present case

21. In Judgment No. UNDT/2018/052, when holding the application was receivable, Judge Ebrahim-Carstens defined the contested administrative decision under art. 2.1(a) of the s Statute as failure/omission to consider the Ap mplaint dated 18 February 2015 under ST/SGB/2008/5 and to inform him of the result . She also clarified that the present case is not *res judicata* udgment No. UNDT/2015/097 concerned a complaint dated 27 December 2013, which the then USG/OIOS dismissed on 18 February 2015 and the complaint in the present case is dated 18 February 2015 and therefore cannot have been adjudicated as part of *Nadeau* UNDT/2015/097. In addition, the former complaint was about the

conduct have the obligation to ensure that complaints of prohibited conduct are promptly addressed in a fair and impartial manner . If they fail to do so and fulfil their obligations under the present bulletin then this may be considered a breach of duty, which, if established, shall be reflected in their annual performance appraisal, and they will be subject to administrative or disciplinary action, as appropriate .

25. The Tribunal notes that whereas sec. 3.2

depending on the circumstances, would also need to take some sort

Did the Administration fulfill its duty under sec. 3.2 of ST/SGB/2008/5?

29. The Tribunal notes that contrary to the contentions of the Respondent, this case concerns sec. 3.2 and not secs. 5.13 and 5.14 of ST/SGB/2008/5. As stated above, under sec. 3.2 of ST/SGB/2008/5, the Administration is required to address a complaint of prohibited conduct promptly

the Applicant; as also submitted by the Respondent, all of these measures concern the general environment in the Applicant s workplace rather than his specific issues.

32. Nevertheless, with reference to sec. 3.2 of ST/SGB/2008/5, the Tribunal finds that whereas the responses to the Applicant s 18 February 2015 complaint were therefore fair and impartial , these responses were not necessarily prompt , which according to the online dictionary of Merriam-Webster means being ready and quick to act as occasion demands and performed readily or immediately .

33. In this regard, the Tribunal notes that the Applicant submitted his complaint under sec. 3.2 of ST/SGB/2008/5 on 18 February 2015. The Director emailed the Applicant on 8 May, 21 August and 6 October 2015 promising him a response to his complaint and, by the Respondent s own admission, the Director only met with the Applicant on 8 and 16 October 2015. Subsequentl4(r)-6(y)20( )-9(o)-9(f)] TJETQ0.00000912 0 612

38. It follows from the consistent jurisprudence of the Appeals Tribunal that the Dispute Tribunal is the primary fact-finder and that it falls within [its] competence to consider all the evidence presented by both parties and to determine the weight to attach to such evidence (see *Gehr* 2012-UNAT-234, para. 47 and similarly, for instance: *Abbassi* 2011-UNAT-110, *Larkin* 2011-UNAT-134, *Larkin* 2012-UNAT-263, *Ljungdell* 2012-UNAT-265, *Fiala* 2015-UNAT-516, *Riano* 2015-UNAT-529). Regarding the evidentiary value of a written assessment of a medical professional, the Appeals Tribunal has taken a flexible approach and while in some cases considered such documentation adequate evidence, it has in other cases dismissed it as insufficient (see, for instance, *Kozlov and Romadanov* 2012-UNAT-228 *vis-à-vis Maslei* 2016-UNAT-637).

39. The Tribunal notes that in the present case, the written assessment is provided by a psychiatrist, who only started to treat the Applicant around two years later after the Administration s delayed response to his complaint. The assessment is therefore made

Conclusion

41. In light of the foregoing, the application is granted in part:

a. The Administration s response to the Applicant complaint under sec. 3.2 of ST/SGB/2008/5 was adequate but untimely;

b. The Applicant s request for compensation is rejected.

(Signed)

Judge Joelle Adda

Dated this 22nd day of November 2019

Entered in the Register on this 22nd day of November 2019

(Signed)

Nerea Suero Fontecha, Registrar, New York