

Case No.: UNDT/GVA/2018/008
Judgment No.: UNDT/2019/179
Date: 17 December 2019

Introduction

1. The Applicant challenges the decision to issue him a written reprimand. He also contests the following decisions connected, in his view, to the written reprimand:

a. Withholding of the investigation report on which the written reprimand is based; and

b. Uploading all documents related to the underlying investigation to the Misconduct Tracking System (“MTS”) of the Department of Peacekeeping Operations (“DPKO”), Department of Field Support (“DFS”).

2. The application was served on the Respondent on 15 January 2018, with a deadline for reply set to 26 February 2018. By joint motion of 16 February 2018, the parties informed the Tribunal that they were engaged in efforts to resolve the dispute informally and requested the suspension of proceedings.

3. By Order No. 42 (GVA/2018) of 19 February 2018, the Tribunal suspended proceedings until 12 March 2018, at which date the Respondent was to file his reply if no settlement between the parties could be reached.

4. On 12 March 2018, the Respondent filed his reply in which he, *inter alia*, contested the application’s receivability *ratione materiae*.

Facts

5. From 6 April 2007, the Applicant served on a series of fixed-term appointments with the United Nations Development Programme (“UNDP”), as a Field Security Specialist at various duty stations.

6. From 2 August 2013, the Applicant served as Chief Security Officer with the United Nations Mission in Kosovo (“UNMIK”) under an appointment with UNDP. The Applicant resigned from UNDP in November 2016 and began employment with UN Women as a Global Security Specialist based in Brussels.

7. By email of 21 February 2017, the Officer-in-Charge (“OIC”), Special Investigation Unit (“SIU”), UNMIK, informed the Applicant that a United Nations Secretariat staff member had complained to the Conduct and Discipline Team (“CDT”), UNMIK, alleging unprofessional behaviour on the Applicant’s part during an incident on 1 November 2016 at UNMIK’s Headquarters in Pristina. The OIC also advised the Applicant that he was the subject of an SIU’s fact-finding investigation in relation to said complaint conducted within the framework of ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority).

8. By email of 14 July 2017, a Conduct and Discipline Officer (“the C&D Officer”), UNMIK, informed the Applicant of the investigation outcome, writing *inter alia*, that the allegations made against the Applicant were unsubstantiated and that, however, “the manner in which [the Applicant addressed] and interacted with the complainant did appear intimidating and therefore inappropriate”. The Applicant was also advised that it had been decided “to close the matter without further action”, that “all relevant documents [had been] uploaded into the Misconduct Tracking System” and that the email in question served as official notification.

9. By email of 18 July 2017, the Applicant formally requested a copy of the investigation report to the C&D Officer. By return email of the same day, the latter responded that no further information would be shared due to the “confidentiality of proceedings”.

10. On 12 September 2017, the Applicant requested management evaluation of the decisions set forth in para. 1 above. He subsequently filed his application on the merits with this Tribunal on 25 January 2018.

Consideration

Receivability ratione materiae

11. The Respondent argues that the application is not receivable *ratione materiae* because no

Uploading of documents to MTS

16. The Respondent also entered into evidence a screenshot from the MTS showing that as per a memorandum dated 22 February 2018 from the Assistant Secretary-General, Department

- b. The application is dismissed as moot concerning the decision to upload to MTS all documents related to the investigation of the complaint filed against the Applicant; and
- c. The Applicant's motion for anonymity is rejected.

(Signed)

Judge Teresa Bravo

Dated this 17th day of December 2019

Entered in the Register on this 17th day of December 2019

(Signed)

René M. Vargas M., Registrar, Geneva