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UNITED NATIONS DISPUTE TRIBUNAL

UNDT/NBI/2018/078

Judgment No.: UNDT/2020/062

Date: 4 May 2020

Original: English

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**Before:** Judge Margaret Tibulya

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

GUSAROVA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for the Applicant:**

Self-represented

**Counsel for the Respondent:**

Chinonyelum Esther Uwazie, UNICEF

Matthias Schuster, UNICEF

## **Background**

1. At the time of application, the Applicant was serving as a Human Resource Manager at the UNICEF East-South Africa Regional Office (“ESARO”) in Nairobi, Kenya.
2. On 25 July 2018, the Applicant filed an application contesting the management evaluation decision, which in UNICEF is conducted by the Deputy Executive Director, Management (“DED/M”), to uphold the decision of the Office of

### **Summary of the relevant facts**

9. On 26 December 2017, the Applicant submitted a complaint to OIAI of abuse of authority against Ms. Ancilla Kazirukanyo, Regional Chief of Human Resources, ESARO, who was her supervisor.<sup>1</sup> The Applicant alleged that Ms. Kazirukanyo abused her power with the intent to unjustly terminate or shorten her employment and damage her career, reputation and health in the process.

10. On 25 January 2018, the Applicant submitted an addendum to her complaint which detailed the reasons why she considered that the performance evaluation Ms. Kazirukanyo provided for the period January through August 2017 constituted an abuse of authority.<sup>2</sup>

11. On 17 April 2018, OIAI concluded that there was no evidence to support the allegation that Ms. Kazirukanyo abused her authority and closed the case.<sup>3</sup>

12. On 23 March 2018, the Applicant requested management evaluation of OIAI's decision to dismiss her claim.<sup>4</sup>

13. On 10 May 2018, the management evaluation response was transmitted to the Applicant. It concluded that there was no documentation or information to suggest that the procedure followed by OIAI was improper or that its finding was manifestly unreasonable or otherwise irrational and rejected her claims for remedies.<sup>5</sup>

### **Considerations**

14. The issue arising for consideration in this case is whether the procedure followed by OIAI in assessing the Applicant's allegations was improper and whether ~~the~~ OIAI's conclusions were manifestly unreasonable.



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21. The Applicant maintains that her supervisor's behaviour and actions went far beyond the normal disagreement on work performance and in effect represented abuse of authority yet, in assessing her complaint, OIAI:

- a. did not take into consideration the above facts in their entirety;
- b. misunderstood her statements;
- c. one day was not sufficient for the review of the additional documents she sent to the investigator, and
- d. given that the volume of the documents she submitted to OIAI for review was quite large, the short turnaround time suggests that they did not sufficiently assess her claim.

22. In line with relevant jurisprudence, the Tribunal is not to conduct a *de novo* investigation into the complaint and will not substitute its own decision for that of the Administration. The Tribunal will only determine if the impugned decision is legal, rational, procedurally correct and proportionate, i.e., it will look into how the Administration responded to the complaint in question.<sup>8</sup> This may entail considering whether relevant matters were ignored and irrelevant matters considered and whether the decision is absurd or perverse. To this end, the Tribunal will examine the same facts and the investigation report to determine the procedural and substantive issues presented by the application.<sup>9</sup>

23. In assessing the complaints which the Applicant structured under five heads, the OIAI Investigator reviewed the documents on record before arriving at the decision to reject the claim. It was determined that there was no evidence to support the Applicant's claim that the Division of Human Resources' ("DHR") team performance and staff satisfaction survey was conducted with the aim of providing negative feedback instead of pinpointing areas of interest and concern for staff, that

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<sup>8</sup> *Sarwar* 2018-UNAT-868, para. 40 citing to *Toure* 2016-UNAT-660, para. 30.

<sup>9</sup> *Dawas* 2016-UNAT-612, paras. 21-35.

the survey was directed at the Applicant, or that her supervisor acted to discredit her. Further, the focus of the survey was on customer care as requested by the Regional Director, Ms. Leila Pakkala, which was in line with an action point arising out of minutes of a meeting on DHR common services<sup>10</sup> and the final questions wlvnnire

meeting in January 2017. There is no othe



held a meeting to discuss the objective which is evidence of managerial incompetence.

31. The OIAI determined that performance management is a mutual responsibility of both the supervisor and staff (as the Applicant was informed) and that it requires active participation and proactive initiation of regular performance from the staff member. In this regard it was noted that the Applicant only took that initiative two days before the deadline. The Tribunal finds that all the facts in so far as they were relevant to this issue were considered and that there is no evidence that the OIAI Investigator misunderstood her statements in this regard.

32. Regarding the complaint that Ms. Kazirukanyo introduced changes to the Applicants' PER objectives which were aimed at setting her up for failure, the DED/M determined in the management evaluation that the Applicant's correspondence with Ms. Kazirukanyo with respect to the 2017 PER objectives commenced well before September 2017 and that in order to find common ground, Ms. Kazirukanyo in fact revised the objectives to an acceptable rate (80% of training completed for the whole year) once the Applicant brought the practical challenges to Ms. Kazirukanyo's attention. The DED/M determined that there is no evidence that Ms. Kazirukanyo's conduct reflects an abuse of authority.

33. The Tribunal finds and holds that information in the documents on record points to purely work related disagreements between the Applicant and her supervisor and rejects the complaint that the DED/M did not take into consideration the facts in





**Judgment**

44. The application lacks merit and is rejected.

*(Signed)*

Judge Margaret Tibulya

Dated this 4<sup>th</sup> day of May 2020

Entered in the Register on this 4th day of May 2020