
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2019/058

Judgment No.: UNDT/2020/092

Date: 19 June 2020

Original: English

Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Nerea Suero Fontecha

HAMMOND

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Nicole Wynn, ALD/OHR, UN Secretariat
Nusrat Chagtai, ALD/OHR, UN Secretariat

Introduction

1. On 17 November 2018, the Applicant, an Administrative Officer at the P-4 level, with the African Union-United Nations Mission in Darfur (“UNAMID”), filed an application challenging the processing of his complaint of prohibited conduct under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) against his First Reporting Officer (“FRO”). The case was filed with the Nairobi Registry.

2. On 24 December 2018, the Respondent filed his reply submitting that the application is without merit as the Applicant’s complaint was processed in accordance with the provisions of ST/SGB/2008/5.

3. On 19 July 2019, the case was transferred to the New York Registry and, on 1 April 2020, the case was assigned to the undersigned Judge.

4. Pursuant to Order No. 68 (NY/2020) dated 15 April 2020, the Respondent filed his closing submission on 24 April 2020 and the Applicant filed his closing statement on 30 April 2020.

5. For the reasons below, the Tribunal finds that since the Applicant was afforded full due process and the investigation was properly conducted, the application is therefore rejected.

Facts

6. On 17 October 2017, the Applicant filed a complaint against his FRO alleging abuse of authority and retaliation. The Applicant alleged that his FRO: (a) imposed irregular working conditions on him; (b) did not recommend extension of the Applicant’s appointment; and (c) recommended reclassification of the post which the

Consideration

The issue of the present case

12. The primary legal issue before the Tribunal is whether the processing of the Applicant's complaint of prohibited conduct under ST/SGB/2008/5 against his FRO was lawful.

Legal framework

13. Staff rule 1.2(f) prohibits any form of discrimination, abuse of authority or harassment at the workplace or in connection with work.

14. ST/SGB/2008/5 provides the procedure for addressing complaints of prohibited conduct.

15. In accordance with sec. 5.20 of ST/SGB/2008/5, where the complainant believes that the procedure followed in addressing the complaint was improper, he or she may appeal pursuant to Chapter XI of the Staff Rules.

16. Before commencing its review, the Tribunal must recall that it is not vested with the authority to conduct a fresh investigation of the initial harassment allegations (see, for instance, *Messinger* 2011-UNAT-123; *Luvai* 2014-UNAT-417). The Dispute Tribunal's scope of review is limited to determining whether the exercise of the Administration's discretion is legal, rational, reasonable and procedurally correct, so that it does not lead to unfairness, unlawfulness or arbitrariness (*Nadeau* 2017-UNAT-733). In this regard, the Dispute Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. It is not the role of the Dispute Tribunal to substitute its own decision for that of the Secretary-General (*Sanwidi* 2010-UNAT-084).

Was the investigation properly conducted?

relevant information about the conduct alleged”. ST/SGB/2008/5 does not prescribe any specific order for conducting interviews.

24. The Panel complied with the sec. 5.16 requirement and properly exercised its discretion on how to conduct the investigation. In this case, the Panel interviewed the FRO on 13 December 2017, four days before interviewing the Applicant because the FRO was departing on leave on 14 December 2017. The Tribunal considers the decision to have been reasonable in order

subsequently took administrative action against the FRO based on the findings of the investigation Panel. The Tribunal notes that in smaller entities in the Organization, a head of office may also be required to act as an SRO of staff members and make appropriate managerial decisions in both capacities. The Tribunal finds that such a circumstance does not raise an inherent conflict of interest which would prevent the SRO from reasonably exercising his or her duties and responsibilities as head of office in relation to the the implementation of ST/SGB/2008/5. Each case must be examined on its own merits, and in the present case there is no evidence to suggest that the Head of Mission’s impartiality could be reasonably perceived to be or was compromised.

The Tribunal

the Applicant a right to comment on the Panel's report and, as such, there is no procedural irregularity in this regard.

Conclusion

36. In light of the foregoing, the application is rejected.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 19th day of June 2020