
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2019/018

Judgment No.: UNDT/2020/013

Date: 27 January 2020

Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

NADEAU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Peter A. Gallo, Esq.

Counsel for Respondent:

Elizabeth Gall, ALD/OHR, UN Secretariat

ay 2017.

5. _____ s
(the second lowest out of four ratings). The individual scores on the set core values and competencies were the following:

a. _____ ng out of four ratings) in the core values of (i) integrity and (ii) respect for diversity/gender;

b. _____ out of four ratings) in professionalism (a core value) and in (i) teamwork, (ii) creativity, (iii) client orientation (all core competencies) and (iv) leadership (a managerial competency).

6. _____ , in general, appropriately reflected the ratings that he had provided to the Applicant. In _____ s overall comments, he stated that:

During the mandatory end of cycle meeting with [the Applicant], which took place on 24 April 2017, in presence of ID Director [presumably, the Director of the Investigations Division, namely the SRO], I discussed with [the Applicant] his performance during the reporting cycle 2016-2017.

[The Applicant] acknowledged that he had received all support he needed from me and colleagues in Unit 5 during the reporting cycle. He also acknowledged that I, as his FRO, always accommodated his requests for assistance. I also pointed out in the discussion that I had approved for [the Applicant] rather broad flexible work arrangement (a combination of two day work from home arrangement and a

requests to approve leave, change days off in the [flexible work arrangements] and that I shall continue to do so since the health of my staff has always been my paramount consideration. [The Applicant] acknowledged that I have always had accommodating attitude. I also encouraged [the Applicant] to approach me when he needs assistance. Considering the performance results as stated in this report and the discussed during the meeting, I concluded [the Applicant] failed to perform the tasks he had set for himself in his Work Plan.

temporary assignment (light administrative duties) for [the Applicant] in the Office of [the] Under-Secretary-General (OUSG). During the temporary assignment, [the

generally

submitted weekly progress reports/updates to me on the status of his work. He satisfactorily met the goals set for this assignment, his work

12.

last 12 months. [The Applicant is] a senior P-4 investigator whose performance has been and remains sub-optimal. contribution to the Division s outputs [is] non-existent. non-compliance with the e-Performance procedures and [the performance improvement plan] put in place to help and guide [him], is indicative of [his] attitude towards [his] work and towards those who supervise [him] ... This document is entirely fair and accurate and the ratings

respectively. Various attempts were made to accommodate the staff member, including two assignments of temporary nature (with the OUSG/OIOS for a period of two months from 8 May 2017 and for six months with the Inspection and Evaluation Division from 1 May 2018). OIOS is not in a position to permanently reassign him internally to other more suitable functions.

16. By interoffice memorandum dated 30 November 2018 from the ASG/OHRM to the Under-Secretary-General of (the Department of) DM

[, the

cycles during which he received

The USG/DM countersigned the memorandum on 7 December 2018 and gave his approval.

17. By letter dated 10 December 2018, the Assistant Secretary-General of (the Department of) DM

Consideration

Case management

The Applicant for a suspension of the execution of Order No. 184
(NY/2020)

19. ated 21 January 2020, Counsel for the Applicant
advises [the Tribunal] that an Appeal against Order 184 (NY/2019) dated 26

immediately executable. With reference to *Siri* and *Staedler*, none of the findings made in Order No. 184 (NY/2019) were of any urgent nature and all been endorsed by the present Judgment. If the Applicant appeals this Judgment to the Appeals Tribunal, the Applicant will therefore also be appealing any order made in Order No. 184 (NY/2019).

25.

that art. 7.5 of the Statute of the Appeals Tribunal has the effect of suspending the execution of Order No. 184 (NY/2019).

Production of further evidence

26. On 2 January 2020, the Applicant submits that as a consequence of the Tribunal's universal exclusion of material evidence which is known to exist, the Applicant cannot rely on the Tribunal reaching a reliable judgment on whether or not the impugned administrative decision was lawful. Any judgement issued will require to be appealed, which will have financial implications for both Tribunals. The Applicant states that in deciding UNDT/NY/2015/063, the Dispute Tribunal permitted Counsel for the Respondent to submit evidence in his closing statement despite having had that evidence in his possession for a number of years. By dismissing the Applicant's request, the Applicant submits that the Tribunal is seeking to establish whether the impugned decision was lawfully made, and by doing so, is consciously excluding evidence of an improper motive for that decision, and by dismissing the Applicant's request, which sought disclosure of information in the public domain, the Tribunal is also excluding evidence that if the Respondent were actually able to produce it would potentially be exculpatory in that it would suggest that OIOS actually did not [have] any such illicit motive. The Applicant contends that the Tribunal has further knowingly excluded evidence of the Investigation Director's [assumedly, the SRO] willful blindness towards evidence of other OIOS investigators of a similar or more senior

level to the applicant, exhibiting performance shortcomings in

legal representatives and litigants in person appearing before the Dispute and Appeals Tribunals, adopted as an appendix to General Assembly resolution 71/266 on 23

diligently and efficiently and shall avoid unnecessary delay in the conduct of

Tribunals in maintaining the dignity and decorum of proceedings and avoiding

The issue of the present case

decide on the termination of an OIOS staff member violates the principle of operational independence in the OIOS mandate . The General Assembly decided that OIOS be operationally independent for a reason; specifically so [United Nations] staff who might be investigated for misconduct have no control over the investigation . Allowing this to happen gives rise to the *quid pro quo* indebtedness that is the essence of corruption in the [United Nations] Secretariat, and explains why the Organization has been so tolerant of the hostile working enviro915.58 Tm-91 0 0 1 166.58 0 42u4q0.

39. Even if the Applicant

is without merit and must therefore be rejected. Pursuant to staff rule 9.6(c), the Secretary-General may terminate the appointment of a staff member who, like the Applicant, holds a continuing appointment in accordance with the terms of the appointment. The Secretary-General has

delegated its authority to the USG/DM (see para. 41) to terminate the appointment of the Applicant.

The Applicant refers to ST/SGB/2019/2 regarding delegation of authority in human resources authorities to the USG/DM (see para. 21). No exception to this delegation of authority is made anywhere in the legal framework governing human resources at the United Nations Secretariat with regard to staff in OIOS, including the resolutions of the General Assembly to which the Applicant refers.

40. Consequently, the USG/DM did possess the authority to terminate the

Was proper procedure followed when the Applicant's continuing appointment was terminated?

41. The Applicant submits that, with reference to ST/SGB/2015/1, para 2.5, in determining whether or not that authority delegation of authority to the USG/DM is appropriate, the steps that lead to that administrative decision must be considered, regardless of

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good faith; (3) whether the USG/DM was provided with all of the relevant facts to support the recommendation, specifically including the facts relating to the Applicant's performance when temporarily assigned to OUSG/OIOS and working under the supervision of Additional Supervisor and to the Inspection and Evaluation Division of OIOS under the supervision of another staff member; (d) whether the USG/DM was made aware of the mid-point review the Applicant had received on 1 November 2018 from the staff member from the Inspection and Evaluation Division of OIOS; and (e) whether the USG/DM was provided with all the mitigating information of the Applicant's medical condition.

42. The Respondent submits that the contested decision was procedurally fair. The Applicant was aware of the performance standards that he was required to meet as an Investigator at the P-4 level, a position that he had held in various duty stations since 2005. The procedures under ST/AI/2010/5 were followed to evaluate the -2017 and 2017-2018 performance records show that the required steps were implemented during each performance cycle: workplan, midpoint review and a final performance appraisal.

43. The Tribunal notes that under staff rule 9.6(c), the USG/DM, on behalf of the

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it is for the Applicant to prove that improper motivation influenced the decision-maker.

49. In the present case, the decision to terminate the Applicant continuing appointment was taken by the USG/DM, the administrative head of the Department of Management. All the other staff members, who were involved in the termination decision process namely, SRO, the Executive Officer and the ASG/OIOS solely provided recommendations. In this regard, the Tribunal notes that all these staff members ranked lower than the USG/DM and worked in OIOS, which is a department of the United Nations Secretariat that is entirely independent of and different from DM. The design of this system of checks-and-balances was evidently established to ensure that ulterior motives would not inappropriately influence important personnel decisions such as, for instance, a termination of a continuing appointment.

50. The Tribunal further finds that no information and/or documentation in the case file indicate that the USG/DM was influenced by improper motivation when

Rather, the USG/DM

acted on the documentation before her, which shows

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51. Accordingly, the Tribunal finds that the Applicant has failed to substantiate that the decision to terminate his continuing appointment was tainted by ulterior motives.

Conclusion

52. The application is rejected.

(Signed)

Judge Joelle Adda

Dated this 27th day of January 2020

Entered in the Register on this 27th day of January 2020

(Signed)

Nerea Suero Fontecha, Registrar, New York