
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2021/009

Judgment No.: UNDT/2021/131

Date: 16 November 2021

Original: English

Before: Judge Alexander W. Hunter, Jr.

Registry: Nairobi

Registrar: Abena Kwakye-Berko

DRISSI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:

discrimination, harassment, including sexual harassment, abuse of authority) and the OIOS would like to refer her complaint to the Executive Director of UNEP (“ED/UNEP”) for thorough review and assessment of the matter.⁶

7. On 14 August 2019, the Applicant consented to the OIOS submitting her complaint to the ED/UNEP.⁷

8. On 21 August 2019, OIOS referred the complaint to ED/UNEP, requesting her to take the necessary action concerning the Applicant’s report of alleged prohibited conduct and recruitment irregularities.⁸

9. Upon receipt of the complaint from OIOS, the ED/UNEP in turn requested the then Acting Chief of Staff of UNEP (“ACS”) to conduct a preliminary assessment of the complaint.⁹

10. On 5 December 2019, the ACS requested the Applicant to provide further information about her complaint, including the emails and names of individuals who witnessed the situations.¹⁰ The Applicant submitted the requested information on 17 January 2020.¹¹ On 23 January 2020, the Applicant provided some additional information in relation to her complaint.¹²

11. On 5 June 2020, the ACS informed the Applicant that the preliminary assessment was completed and that the facts obtained regarding her complaint did not amount to misconduct or prohibited conduct.¹³

12. On 20 August 2020, the Applicant requested management evaluation of the Administration’s decision to not investigate her complaint.¹⁴ The Management

⁶ Application, section VII, para. 8.

⁷ Ibid, para. 9.

⁸ Reply, annex B.

⁹ Reply, section II, para. 4.

¹⁰ Reply, annex C, p. 7.

¹¹ Ibid, p.1.

¹² Reply, annex D.

¹³ Reply, annex F.

¹⁴ Application, annex 8.

Evaluation Unit responded on 30 October 2020 informing her that the Administration had complied with its obligations in respect of its handling of her complaint and the Secretary-General had decided to uphold the contested decision.¹⁵

Submissions

Applicant's submissions

13. The Applicant submits that her complaint was not fairly or competently investigated.¹⁶ She avers that in support of her statement, she provided emails and a list

Respondent's submissions

17. The Respondent submits that the allegations in the complaint submitted by the Applicant did not provide a *prima facie* case of harassment as the claims were unsubstantiated. The Respondent argues that regarding the allegation of humiliation by Mr. C during the meeting by skipping her when he received updates from other members of the team, the Applicant failed to specify the date when the incident happened, and she could not indicate whether she brought it to the attention of Mr. C.

18. In respect of the allegation relating to the budget allocation, the Applicant was unable to produce any emails that substantiated her claim. She only stated that several programme officers complained about the way Mr. C would allocate the budget

Applicable Law

22. ST/SGB/2008/5 was promulgated by the Secretary-General to ensure that all staff members of the Secretariat are treated with dignity and respect and are aware of

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29. Following the referral of the complaint to UNEP, the Executive Director tasked the ACS of UNEP, pursuant to section 5.4 of ST/AI/2017/1, to conduct a preliminary assessment.

30. The ACS contacted the Applicant to obtain additional information and documentation to substantiate her claims. Mr. C was also contacted and he provided his response to the issues raised in the complaint filed by the Applicant. The ACS also contacted the United Nations Office at Nairobi-Human Resources Management Service (“UNON/HRMS”)

projects/initiatives, the period for which the funds were allocated and the amounts, if possible; and, (iv) more information concerning her communications with the Ombudsman and any follow up.

35. The Tribunal notes that the purpose of this request was to assist the ACS in eliciting the details which would allow him to determine whether an investigation into the conduct the Applicant alleged in her complaint would reveal sufficient evidence to further pursue the matter as a disciplinary case. However, the Applicant's response to the ACS did not provide sufficient information to indicate that a further investigation would reveal misconduct. For example, the Applicant described the difficulty she experienced in completing the tasks assigned to her by Mr. C in respect of her Performance Improvement Plan. This is a managerial prerogative and not one dealing with discipline or discrimination.

36. The Applicant also indicated that Mr. C attempted to discredit her by mentioning to her colleagues via email that she was underperforming, but she was unable to produce any emails to this effect.

37. The Applicant stated that Mr. C tried to humiliate her during a branch meeting by skipping her when he received updates from other members of the team. However, she could not specify the date when the alleged incident happened and could not indicate whether she brought this to the attention of Mr. C.

38. In respect of budget allocation, the Applicant was unable to produce any emails that substantiated her allegations, but she noted that several Programme Officers complained about the way Mr. C would allocate the budget according to his agenda, making it challenging for them to manage their projects and deliver results. She was also unable to provide emails of staff members who complained about the fact that the budget being allocated was small.

39. With regard to the Applicant's argument that the Administration should have contacted witnesses to obtain 3()-70d2

witnesses during preliminary assessments especially when the Applicant does not substantiate the allegations in the complaint. The Executive Director has the discretion to conduct the preliminary assessment as he/she deems necessary, taking into consideration section 5.5 of ST/AI/2017/1.

40. It should also be recalled that mere disagreements on work performance or on other work related issues is normally not considered harassment. The conduct the Applicant alleged even if true, is ET Q q BT /F1.b6(e)3(r)3.0 TJ ET Q q 287 0.0981 0.0 0.0 3

43. The Chief TMC further stated “from a recruitment perspective, we do not see any concern with the integrity of the selection process or out of the ordinary for this roster selection”.¹⁸

44. To the extent that the Applicant seeks an investigation into alleged irregularities as a disciplinary matter, the jurisprudence of this Tribunal is to the effect that “even if it had been in the [a]pplicant’s interests to take action on this issue, the decision to conduct such an investigation is the privilege of the Organization itself”.¹⁹

45. In the case of *Nadeau*, 2017-

imposed". Lacking such grounds, the Appeals Tribunal concluded that the Administration is not allowed to initiate an investigation because such an investigation can have a negative impact on the staff member concerned.

47. In conclusion, the Tribunal rejects this application.

JUDGMENT

48. The application is hereby dismissed.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 16th day of November 2021

Entered in the Register on this 16th day of November 2021

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi