



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2023-UNAT-1373

**Mihai Nastase
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge Graeme Colgan, Presiding Judge Kanwaldeep Sandhu Judge Gao Xiaoli
Case No.:	2022-1718
Date of Decision:	30 June 2023
Date of Publication:	4 August 2023
Registrar:	Juliet Johnson

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Francisca Lagos Pola

JUDGE GRAEME COLGAN, PRESIDING.

1. Before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), Mihai Nastase challenged the decision not to open an investigation into his harassment complaint. By Judgment No. UNDT/2022/056 (impugned Judgment), the UNDT dismissed his application. Mr. Nastase has filed an appeal against that Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).

2. For the following reasons, we dismiss Mr. Nastase's appeal.

Facts and Procedure

3. In 2020, Mr. Nastase served as an Information and Communications Technology (ICT) Specialist at the United Nations Office for Project Services (UNOPS) in Valencia, Spain. In that capacity, Mr. Nastase provided services to the Office of Information and Communications Technology (OICT), United Nations Global Service Centre (UNGSC), under a Financial Agreement.

4. Between 22 April 2020 and 11 May 2020, Mr. Nastase received three e-mails from the Chief, Infrastructure Operations Section (CIOS), UNGSC, alleging underperformance of his duties by him. The three e-mails set out statistics on Mr. Nastase's performance which had been recorded on the Organisation's electronic "iNeed" platform. In the first e-mail, dated 22 April 2020, the CIOS stated that he had noticed, "as per screenshot", that his performance in iNeed was "very low" and asked that he improve it to the level of the expectations as set out in the Financial Agreement. In the second e-mail, also dated 22 April 2020, the CIOS stated that he had repeatedly advised Mr. Nastase that iNeed was the main tool for measuring performance and requested that Mr. Nastase's performance be improved to the expected level before the end of that month. In the third e-mail, dated 11 May 2020, the CIOS stated that Mr. Nastase's performance had not improved since the last communication.

5. Because the lawfulness of the process by which UNOPS dealt with these performance issues is not an issue in this case that we have now to decide, we simply observe that over a period of only about three weeks UNOPS had advised Mr. Nastase of its dissatisfactions and concluded that he had failed to make improvements to its satisfaction.

6. On 12 May 2020, Mr. Nastase sent an e-mail to the UNOPS Senior Programme Manager (UNOPS SPM), highlighting his disagreement with the CIOS' assessment of his performance.

7. On 22 June 2020, Mr. Nastase filed a harassment complaint with the Office of Internal Oversight Services (OIOS) pursuant to Secretary-General's Bulletin ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority). In his complaint, the Appellant set out the correspondence between the Appellant and the CIOS in a chart. That same day, Mr. Nastase was sent a response e-mail requesting him to supplement his harassment complaint with additional information if he wanted to pursue a complaint of prohibited conduct against the CIOS.

8. On 15 July 2020, Mr. Nastase sent OIOS an e-mail supplementing his harassment complaint. In that e-mail, he once again set out the correspondence between himself and the CIOS in a chart. He also indicated that he had received an e-mail from the UNOPS SPM informing him that he would be placed on a performance improvement plan (PIP) and confirming his removal from the "Cloud Deployment Team" (CDT). Although it appears that a decision was made and conveyed to him that he would be put on a PIP, there is no information about whether that was done and, if so, the outcome. As we have noted, however, the lawfulness of the PIP process is not a matter for our consideration.

9. On 28 July 2020, OIOS informed Mr. Nastase that his complaint fell within the application of ST/SGB/2019/8 and that, as a result, it would refer his complaint to the Under-Secretary-General for the Department of Operational Support (USG/DOS) for review and assessment of the matter.

10. On 6 August 2020, the Alternate Conduct and Discipline Focal Point for UNGSC (Conduct and Disciplinary Focal Point) sent an e-mail to Mr. Nastase confirming receipt of his harassment complaint and requesting him to further supplement his complaint which consisted of issues related to performance management.

11. On 10 August 2020, Mr. Nastase sent an e-mail response to the Conduct and Disciplinary Focal Point, setting out, once again, the e-mail correspondence between himself and the CIOS and reiterating that in his view there were flaws in the iNeed system as a performance recording tool.

12. On 28 August 2020, the USG/DOS informed Mr. Nastase that a preliminary assessment of his complaint had revealed no information of prohibited conduct under ST/SGB/2019/8, and as a result, the complaint had been closed without opening a formal investigation.

13. On 18 September 2020, the UNOPS SPM informed Mr. Nastase that his appointment would not be renewed beyond 30 November 2020 due to lack of funding.¹

14. On 27 October 2020, Mr. Nastase filed a request for management evaluation of the decision of the USG/DOS to close his complaint of prohibited conduct against the CIOS after a preliminary assessment, without opening an investigation. By memorandum dated 2 December 2020, Mr. Nastase was informed that the contested decision had been upheld.

15. On 28 February 2021, Mr. Nastase filed an application before the UNDT challenging the decision not to open an investigation.

16. On 13 June 2022, the UNDT issued Judgment No. UNDT/2022/056. The UNDT held that a decision to close a complaint of alleged prohibited conduct is discretionary in nature, and that the USG/DOS' decision not to investigate the harassment complaint was lawful. The UNDT held that there were no indicia of harassment in the e-mails and follow-up actions that were the object of Mr. Nastase's complaint, and that the CIOS' e-mails to him stated nothing more than a performance issue that needed to be addressed and the follow-up measures taken by his supervisors were well within their managerial discretion. The UNDT thus dismissed the application.

17. On 10 August 2022, Mr. Nastase filed his appeal with the UNAT, and the Secretary-General filed his answer on 14 October 2022.

¹ As already noted, Mr. Nastase has filed a separate appeal in relation to this decision which was also decided during the UNAT's 2023 summer session. See *Mihai Nastase v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1367.

Submissions

Mr. Nastase's Appeal

18. Mr. Nastase contests the UNDT Judgment on grounds that the UNDT has erred in fact, resulting in a manifestly unreasonable decision.

19. In particular, Mr. Nastase submits that the UNDT erred in finding that he had expressed concern about being the subject of retaliation by the CIOS as a result of a “disagreement” that arose between them during a recruitment exercise in December 2019. In his application to the UNDT, Mr. Nastase described in detail that the circumstances did not show a “disagreement” but a “blatant case of misconduct” on the part of the CIOS; misconduct, which has also been recognised by the Chairperson of the Ethics Panel of the Organization which decided that the prompt reporting by Mr. Nastase of the CIOS’ misconduct was a protected activity, and the UNDT was informed about this decision.

20. Mr. Nastase further contends that the UNDT erred in stating what his “principal contentions” were. The UNDT failed to include essential facts that clearly document that the CIOS knowingly based his unfair underperformance statements on a performance measuring tool that was inaccurate and was undergoing changes to adapt to the team’s new processes. In particular, the UNDT ignored the essential and documented fact that the CIOS repeatedly and knowingly based his underperformance statements on an inaccurate performance measuring tool to measure the performance of Mr. Nastase’s reduced team and the team’s new processes as documented before the UNDT.

21. Mr. Nastase submits that the UNDT erred in finding that his claim that the CIOS had used his influence to successfully remove him from the CDT and to place him on a PIP was speculative in the absence of any evidence in this regard. Mr. Nastase did provide to the UNDT details of the meetings in which the UNOPS SPM mentioned that the CIOS had initiated and demanded these actions against Mr. Nastase. The detailed minutes of these meetings with the UNOPS SPM were shared with, and not contested by, the UNOPS SPM, and were also shared as requested by the UNDT, although in a different but related case (case no. UNDT/GVA/2021/20).

22. Mr. Nastase contends that the UNDT erred in finding that his complaint concerned one specific incident, i.e., the “underperformance” e-mails sent by the CIOS, which resulted in his removal from the CDT and his placement on a PIP, and that these follow-up actions had not been

taken by the CIOS, but rather by his supervisors. Instead, further to the CIOS' initiative communicated to the UNOPS SPM to remove Mr. Nastase from the team and to place him on a PIP, the CIOS was actively involved in the decision meeting that followed as confirmed by the UNOPS SPM. Further, the Judgment fails to mention that it progressively became apparent that the UNOPS SPM may have had a direct interest in supporting the CIOS' actions as the UNOPS SPM did not properly follow up on Mr. Nastase's recent report regarding the CIOS' misconduct on recruitment and because Mr. Nastase did not obey the CIOS, despite the UNOPS SPM's motto: "client is always right", here the "client" being the CIOS.

23. Finally, Mr. Nastase alleges that the UNDT also erred in stating that his complaint did not address any concerns of retaliation, and it was not until reaching the management evaluation stage that he claimed that the CIOS' conduct was retaliation for Mr. Nastase reporting the CIOS for possible misconduct during a recruitment exercise in December 2019. The UNDT fails to mention that Mr. Nastase had been assured by the UNOPS SPM that his reporting action would be properly followed up on and that it was only later when it became apparent that this may not have been done that Mr. Nastase suspected that the UNOPS SPM's support of the CIOS' actions may be explained by retaliation as reported to the Management Evaluation Unit (MEU). Mr. Nastase became with time aware of the lack of transparency and slowness of processes related to the misconduct which Mr. Nastase asked to be reviewed, as a remedy by Mr. Nastase in the UNDT, but which was ignored by the Judgment.

24. Mr. Nastase asks that the UNAT rescind the decision of the USG/DOS to close his complaint of prohibited conduct of the CIOS towards him under ST/SGB/2019/8, after a preliminary assessment, without opening investigation, "despite the facts and context showing manifest signs of prohibited conduct"; and "[r]escind the decision of [the MEU] to uphold the decision of [the] USG/DOS". He also submits that the "organizational processes relevant to this case need to be revisited in order to avoid similar issues in the future and further prevent misconduct".

The Secretary-General's Answer

25. The Secretary-General submits that the UNDT correctly dismissed the application. The test on whether conduct is harassment focuses on the conduct itself and requires an objective examination as to whether it could be expected or perceived to cause offence or humiliation to a reasonable person. Hence, Mr. Nastase's perception alone of the CIOS' actions is insufficient to

qualify the CIOS' actions as harassment. The three e-mails from the CIOS only refer to Mr. Nastase's underperformance and are not phrased in a way that could be regarded as harassment or any other form of prohibited conduct. Even the subsequent managerial actions of placing Mr. Nastase on a PIP and his removal from the CDT, constitute performance related actions and cannot reasonably be construed as harassment or any other form of prohibited conduct. Further, even if one were to collectively consider the three e-mails and the managerial actions, there would be no indication of harassment or any other form of prohibited conduct.

26. The Secretary-General further submits that Mr. Nastase failed to demonstrate any error by the UNDT warranting the reversal of the Judgment. Mr. Nastase's arguments that the behaviour of the CIOS during the recruitment process in December 2019 constituted misconduct, that such misconduct had been recognised by the Chairperson of the Ethics Panel as a protected activity and that the UNDT incorrectly characterised as a "disagreement" the interactions between Mr. Nastase and the CIOS during the recruitment process, are misleading.

27. The recruitment process of December 2019 referred to by Mr. Nastase in his management evaluation request, his application, and now his appeal, was never mentioned by Mr. Nastase in his harassment complaint and in his e-mails supplementing his harassment complaint. The recruitment process in December 2019 could not have therefore been considered by the USG/DOS when conducting the preliminary assessment of the harassment complaint. The information submitted beyond the harassment complaint falls squarely outside of the scope of the proceedings and should not be considered by the UNAT. There is also no evidence on record concerning any recognition by the Ethics Office of the CIOS' conduct during the recruitment exercise being a "protected activity".

28. Turning to Mr. Nastase's contention that the UNDT did not take into account "essential facts" or "relevant context" that was "well documented", the Secretary-General submits that Mr. Nastase's subjective assessment of the iNeed platform, and whether or not the CIOS was aware of the inadequacy of the platform, is a performance-related matter that has no relevance to the review of the contested decision. Furthermore, the UNDT did address the fact that Mr. Nastase regarded the iNeed platform as an inaccurate performance tool, and that he had informed the CIOS accordingly. Even if it were true that the UNDT disregarded these "essential facts", the UNDT gave a detailed and well-reasoned Judgment and is not required to specifically address each and every aspect of Mr. Nastase's claims. Mr. Nastase's submission should therefore fail.

29. The Secretary-General contends that Mr. Nastase's submissions regarding the CIOS' involvement in placing him on a PIP and removing him from the CDT, are inaccurate. Nowhere in the record of these proceedings is there any evidence that the CIOS influenced the UNOPS SPM to implement a PIP or remove him from performing his functions in the CDT. The "evidence" referred to by Mr. Nastase in the appeal is merely his own account of his meetings with the UNOPS SPM where Mr. Nastase was allegedly informed by the UNOPS SPM that the CIOS influenced such decisions. Even if there was such evidence, the managerial actions of implementing a PIP and removing him from his functions in the CDT, constitute performance related actions which are permissible and can be challenged in the context of performance management. There is no indication that these actions constituted harassment or another form of prohibited conduct. The Secretary-General concludes by submitting that Mr. Nastase has failed to demonstrate how any of the alleged mischaracterisations or omissions on the part of the UNDT resulted in a manifestly unreasonable judgment or would even have in any way changed the outcome of the Judgment.

30. The Secretary-General requests the UNAT to uphold the UNDT Judgment and to dismiss the appeal in its entirety.

Considerations

31. It is important at the outset to define what this appeal is about and what it is not about. As not uncommonly in cases presented by unrepresented litigants, it is not always well understood that the scope of justiciable complaints is defined and limited by the issues that were before the UNDT as defined by Mr. Nastase, the applicant in that forum. Even earlier than that, he had similarly defined and limited his issues to those of which he complained and as were considered by the Organisation's management evaluation exercise. Associated with that, we need to say also that it is not a valid head of claim before the UNDT or us, but as Mr. Nastase has attempted to say, that this is also an appeal against the management evaluation decision. Management evaluation is an internal filtering mechanism which is intended to offer the Organization of which the MEU is a part, an opportunity to acknowledge, if appropriate, that a staff member's complaint has validity and to correct what previously occurred without the necessity of litigating that, or parts of it, before the UNDT.

32. Because Mr. Nastase was the subject of a series of decisions to which he objected, it is important to define the issue before us. The issue that is the subject of this appeal is the UNDT's decision that the Respondent justifiably closed, without investigation, Mr. Nastase's complaint

about prohibited conduct (harassment and abuse of authority) he alleged was committed against him. The lawfulness of his subsequent non-renewal of his contract of employment with the Organisation is not a discrete administrative decision that is before us for decision. Nor is the Respondent's decision to place him on a PIP. Nor is the general or specific appropriateness of the performance evaluation system known as iNeed of which Mr. Nastase was critical. Mr. Nastase's challenge to the non-renewal of his fixed-term contract was the subject of a separate case before the UNDT and a separate appeal and judgment before the UNAT² and is, thereby, not within the scope of this Judgment.

33. The UNDT began discussion of the consideration of Mr. Nastase's case at paragraph 28 and following of its Judgment by stating some principles that it proposed to apply to the facts. The first was to emphasise the discretion vested in the Organization "on how to conduct a review and assessment of a complaint of prohibited conduct" citing UNAT Judgment No. 2017-UNAT-733/Corr 1. The Dispute Tribunal wrote: "Only in a case of serious and reasonable accusation does a staff member have a right to an investigation against another staff member which may be subject to judicial review."³

34. While it is true that, in general, a staff member cannot insist that the Organization take disciplinary action against another staff member, that is not to say that a staff member does not have rights that, if warranted, may mean that the Organization should take such action against another staff member. At the stage it reached, Mr. Nastase's was a case not, at least in law, one of his wanting the Organization to take action against another staff member but was rather one in which he sought to complain of a wrongful act to which he had been subjected by the Organization. That is, the emphasis or objective of his case was on himself and not on disciplinary action against another or others. That his complaint may have required an investigation into the conduct of another or other staff members, was a potentially subsequent element of determining first whether he had been subjected to a wrongful decision, but it was not the subject of his complaint.

35. We accept that the general principles stated by UNDT in paragraph 28 of its Judgment were applicable to the case: a fact-finding investigation may follow a preliminary assessment

² *Nastase*, op. cit.

³ Impugned Judgment, para. 28.

if there are sufficient grounds or reason to believe that a staff member has engaged in prohibited conduct towards the complainant.

36. We agree also with the approach taken by the UNDT that it could not substitute its decision for that of the responsible official charged with doing so. Rather, its role was to determine the lawfulness of the contested decision (to close his complaint following a preliminary assessment) on grounds of legality, reasonableness, and procedural fairness.

37. The UNDT set out its findings of the lawfulness, reasonableness, and procedural fairness of the decision to close Mr. Nastase's complaint file, at paragraphs 32 and following of its Judgment. It expanded correctly on those tests as being ones of lawfulness, rationality, procedural correctness, and proportionality. This involved a consideration of whether relevant matters had been ignored or irrelevant matters considered, and whether the decision was absurd or perverse. If the decision had met or alternatively not fallen foul of these tests, then the UNDT said correctly that the choice of a range of options open to the Organization was not for it but remained with the responsible official of the Organization.

38. The UNDT categorised Mr. Nastase's complaint essentially as his disagreement about his performance of his work and similar issues with the assessment made by those to whom he was responsible. The Judge said that pursuant to Section 1.1 of ST/SGB/2019/8, normalcy was the critical factor for evaluation in determining whether Mr. Nastase's complaint was a "normal" disagreement about work performance.

39. Mr. Nastase's heads of appeal all claim that the UNDT made errors of fact in its decision which, individually, severally or in total mean that its decision should be set aside. To achieve that outcome based on errors of fact, he must also establish that the error or errors of fact caused the UNDT Judgment to be manifestly unreasonable, that is obviously or clearly so.

40. Addressing Mr. Nastase's claim that the management evaluation and confirmation of the Respondent's decision to close his complaint, we agree with the UNDT that this is not justiciable. The MEU evaluation is an organizational internal check of the correctness of a decision and not a separately challengeable decision. If a management evaluation finds the original decision erroneous, that will usually bring about, fully or in part, the staff member's desired result. If the management evaluation is to uphold the original decision, an appellant's remedy is to challenge

the original decision in the UNDT as Mr. Nastase has done. The Tribunals' scrutiny is of the original decision and not of the merits of the MEU's examination and confirmation of it.

41. Also not justiciable is Mr. Nastase's assertion that the iNeed software platform used to assess staff performance of their duties is inadequate, inaccurate and thereby inappropriate for doing so, at least in his case. Such an argument goes to the question, beyond the scope of this appeal, about the assessment of his underperformance and what was done about that. While the UNDT did address, by dismissing it, that argument made by Mr. Nastase before it, we agree with the Respondent that it is not within the scope of this proceeding or certainly of his appeal.

42. So too, and for the same reasons, is the Appellant's challenge to the involvement of the CIOS in placing Mr. Nastase on the PIP and removing him from the CDT. It is not justiciable in this appeal concerning the closure of his complaint of retaliation against him.

43. Having identified the non-justiciable elements of Mr. Nastase's appeal, we turn now to the merits of it that are justiciable.

44. We start with the Organization's relevant and applicable governing provision which was for consideration following the preliminary assessment undertaken pursuant to Section 5.6 of Administrative Instruction ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process).

45. The prohibited conducts of "harassment" and "abuse of authority" are defined respectively in Sections 1.3 and 1.4, and 1.8 of ST/SGB/2019/8 as follows:

Harassment

1.3 Harassment is any unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person, when such conduct interferes with work or creates an intimidating, hostile or offensive work environment.

1.4 Harassment may take the form of words, gestures or actions which tend to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another. ... Harassment normally implies a series of incidents.

...

Abuse of authority

1.8 Abuse of authority is the improper use of a position of influence, power or authority against another person. This is particularly serious when a person uses their influence, power or authority to improperly influence the career or employment conditions of another, including, but not limited to, appointment, assignment, contract renewal, performance evaluation, working conditions or promotion. Abuse of authority may also include conduct that creates a hostile or offensive work environment which includes, but is not limited to, the use of intimidation, threats, blackmail or coercion. Discrimination and harassment, including sexual harassment, are particularly serious when accompanied by abuse of authority.

46. Despite the breadth of the definitions set out above, ST/SGB/2019/8 provides at Section 1.1 (Definitions):⁴

Prohibited conduct

1.1 For the purposes of the present bulletin, discrimination, *harassment*, including sexual harassment, and *abuse of authority* shall collectively be referred to as “prohibited conduct”. *Disagreement on work performance or on other work-related issues is normally not considered prohibited conduct and is not dealt with under the provisions of the present bulletin but in the context of performance management.*

47. As did the UNDT, the focus of this case is on whether the conduct complained of by Mr. Nastase amounted to a disagreement about work performance or other work-related issues. If it did, then it would not “normally” be considered prohibited conduct. This leaves open that some conduct in relation to such matters may nevertheless be prohibited, but requires an assessment of all relevant evidence on a case-by-case basis.

48. The first ground of appeal appears (because it is not clearly so stated) to be that the UNDT erred in finding that the fact that in 2019, Mr. Nastase had filed a complaint against the CIOS alleging misconduct was unrelated to his performance issues. That was because it nevertheless evidenced at least a latent bias against him at the time performance issues came to be raised. This prior contretemps is said to have related to a recruitment process. Mr. Nastase’s complaint is that this issue (existing or underlying bias) which he put before the UNDT was, erroneously, not addressed by it. Mr. Nastase says that the previous events concerning a recruitment process were no mere “disagreement” as the UNDT characterised them, but rather a blatant case of abuse of authority by the CIOS to improperly influence an

⁴ Emphases added.

appointment in breach of established recruitment policies. This characterisation of those earlier events was said to have been accepted by the Ethics Panel which found that the report of those was a protected activity.

49. The Respondent's answer to this ground is that it cannot be considered on appeal because his complaint relating to the 2019 recruitment events was first made as part of his management evaluation request and then as part of his case before the UNDT. However, the Secretary-General says it is inadmissible because it was not part of his complaint of harassment and abuse of authority in relation to his performance review complaint and so could not have been taken into consideration when the decision to close that complaint was made. It was, nevertheless, considered by the UNDT and referred to in its Judgment.

50. Although Mr. Nastase asserts error by the UNDT at paragraph 18 of its Judgment, that was the Dispute Tribunal's summary of his case before it and focussed relevantly on the claim of retaliation. We do not read the UNDT as having decided that there had been a mere disagreement in 2019 about the recruitment issue. The nature of those events may be relevant to whether there was undue influence or bias exercised against him subsequently, but this was an issue for the UNDT to be addressed elsewhere in its Judgment.

51. The Appellant is also critical of how the UNDT dealt with his argument as recorded at its paragraph 26:

...

f. In the management evaluation request, [Mr. Nastase] included facts and new context sustaining his increasing concerns of being subject to retaliation following his report against the CIOS in December 2019 regarding possible misconduct of the latter in a UNOPS recruitment exercise. Said retaliation concerns were ignored by the MEU.

52. The UNDT addressed this issue at paragraph 40 of its Judgment as follows:

... [Mr. Nastase] also claims that the CIOS used his influence with the UNOPS SPM and with the Chief Technology Operations ... to successfully remove him from the CDT and to place him under a PIP. However, such assertion is speculative at best since the Applicant did not provide any evidence in this regard. Notwithstanding, even if true, the UNOPS SPM's actions, supported by [Mr. Nastase's] primary supervisor, are well within his role and whether he was influenced by the assessments made by the CIOS is not relevant.

53. This was how the UNDT dealt with what was a claim of bias and abuse of authority in the process that led to the impugned decision to close the complaint file. The Appellant's claim at first instance failed because it was not proven, but in any event, we infer from paragraph 40 that it would have been dismissed for irrelevance. We are not persuaded that this was an erroneous conclusion by the UNDT.

54. We move to the next broad ground of appeal, whether the manner in which the Appellant's work performance issues were dealt with by the Administration constituted harassment and/or abuse of authority.

55. A staff member's dissatisfactions about criticisms of his or her work performance do not normally alone constitute harassment of, or abuse of authority against, the staff member whose work performance is criticized. That is not to say that the way critique is exhibited cannot constitute such misconduct: rather, what is described as "normal" performance management interactions should be addressed in that, and not in a disciplinary, context. Staff members subject to adverse work performance assessments will naturally and even inevitably be concerned about them and may frequently disagree with the assessments, including the appropriateness of the mechanism used to make those assessments. Those, and other related concerns such as whether the adverse performance is that of the individual staff member or of his/her team (as Mr. Nastase alleged), are matters that the system of performance management allows to be aired.

56. We have examined the communications between the Administration and the Appellant in relation to the closure of his complaints of harassment and of abuse of authority and can find nothing in them when they are considered objectively that would constitute those prohibited conducts. While the assessments of his work performance and the steps that the Administration proposed to take to address those assessments may have upset and disturbed the Appellant subjectively, objectively assessed they did not amount to the prohibited conducts he complained of. After a preliminary assessment as was appropriate, there was nothing unlawful in the investigation of the complaints not being taken further and the UNDT was thus right that the closure of the complaint file was lawful.

57. Addressing the other arguments advanced on his appeal (regarding the 2019 recruitment disagreement, Mr. Nastase's ensuing complaint against the CIOS, and whether his subsequent performance treatment was a form of retaliation for that or was otherwise improper conduct

associated with it), we cannot resist the logic of the Secretary-General's answer to this argument. Those events were not referred to by the Appellant in his harassment complaint (including in his subsequent supplementary e-mails) which complaint was investigated before the decision was made to close it without further investigation. In these circumstances Mr. Nastase cannot complain that the Respondent failed to take account of this issue when he had not then been made aware of it. Even if this ground of challenge to the involvement in his performance assessment by the CIOS had been an issue in the preliminary assessment of his complaint of harassment, there has been no persuasive evidence adduced to support the proposition that there was improper interference in the decision to close the complaint attributable to those earlier events.

58. For the foregoing reasons, the Appellant has not established any error by the UNDT that would invalidate its Judgment.

Judgment

59. Mr. Nastase's appeal is dismissed, and Judgment No. UNDT/2022/056 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 30th day of June 2023 in New York, United States.

(Signed)

Judge Colgan, Presiding

(Signed)

Judge Sandhu

(Signed)

Judge Gao

Judgment published and entered into the Register on this 4th day of August 2023 in New York, United States.

(Signed)

Juliet Johnson, Registrar