



Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pelé Fomété

HAYDAR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:
Edwin Nhliziyo, CPA

Counsel for respondent:
Elizabeth Gall, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant, a staff member of the African Union - United Nations Hybrid Operation in Darfur (“UNAMID”), is contesting an administrative decision dated 07 July 2011 [“the Decision letter”] from the Joint Special Representative (“JSR”) of UNAMID, concluding that there was insufficient evidence to warrant any further action under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, abuse of authority)¹ in respect of allegations made against the Applicant by several UNAMID personnel (“the Complainants”) in August and September 2009. Further, the Applicant is contesting the Respondent’s failure to take appropriate and prompt action on formal complaints of harassment she had made in accordance with ST/SGB/2008/5 against several UNAMID staff members.

2. The Applicant requests that the Tribunal order the Respondent to: (i) take disciplinary action against the staff members whose complaints against her were found to be unsubstantiated; (ii) address or remedy the gender discrimination she was subjected to by the Complainants; and (iii) take appropriate action on her formal complaints of harassment. The Applicant seeks financial and other compensation for damage sustained by her from the discrimination she has endured.

Facts and Procedural History

3. The Applicant is a P-3 Supply Officer employed by UNAMID on a fixed-term appointment. At the time of the contested decision, she was serving as the Officer-in-Charge (“OIC”) of the UNAMID General Supply Unit in El Fasher, Darfur, Sudan. In her capacity as OIC, General Supply Unit, she supervised national staff members and a number of international staff members.

¹ For the purposes of this Secretary-General’s Bulletin, discrimination, harassment, including sexual harassment, and abuse of authority are collectively referred to as “prohibited conduct”.

4. In August 2009, the Applicant's supervisor, MN, who was the OIC of the UNAMID Supply Section, filed a complaint with the UNAMID Conduct and Discipline Unit ("CDU") alleging that the Applicant had abused him verbally and threatened him. In September 2009, forty-six (46) national staff members under her supervision filed a complaint with CDU alleging that the Applicant had: (i) harassed and threatened them; (ii) abused them verbally; (iii) violated their human rights by forcing them to work under unhealthy conditions; and (iv) abused her authority.

5. CDU referred the two complaints to the UNAMID Security Investigation Unit ("SIU") for a preliminary investigation under ST/AI/371 (Disciplinary Measures and Procedures). The Investigation Report of the SIU ("the SIU IR"), dated 15 December 2009, was submitted to CDU in early 2010. After CDU's review of the IR, the OIC of the UNAMID Mission Support Division ("MSD") informed the Applicant, via a memorandum dated 22 June 2010, that due to the many inconsistencies and contradictions contained in the SIU IR, there was insufficient evidence to warrant any further action and/or investigation under section 5.14 of ST/SGB/2008/5 and as such, the matter was closed.

6. On 23 February 2011, the Applicant made a formal complaint under ST/SGB/2008/5 alleging discrimination, harassment and abuse of authority against several UNAMID staff members. She also alleged that she had been retaliated against under ST/SGB/2005/21 (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations). On 22 March 2011, she submitted a supplementary complaint to the initial one submitted in February 2011.

7. On 9 June 2011, the Applicant submitted a request for management evaluation against UNAMID's failure to: (i) provide her with a copy of the SIU IR of 15 December 2009; (ii) take disciplinary action against the Complainants; (iii) take steps to repair her damaged credibility and professional reputation subsequent to the dismissal of the complaints against her; and (iv) act on her complaint of

discrimination, harassment and abuse of authority in accordance with ST/SGB/2008/5.

8. On 7 July 2011, the JSR/ UNAMID forwarded summaries of the findings and conclusions contained in the 15 December 2009 SIU IR to the Applicant. On 12 July 2011, the Applicant wrote to the Management Evaluation Unit (“MEU”) to reiterate her request of 9 June 2011 and to dispute the accuracy of the summary of findings and conclusions that had been forwarded to her by the JSR/UNAMID.

9. In a response dated 29 July 2011, the Management Evaluation Unit (“MEU”) informed the Applicant that her request for a copy of the IR was moot in light of the fact that UNAMID had provided her with a summary of the findings and conclusions in the report and also because she had managed to acquire a copy of the IR on her own. Additionally, MEU informed her that the contested decision not to act on her formal complaint of harassment had been rendered moot due to the fact that UNAMID was in the process of reviewing her complaint and anticipated that the process would be completed by 1 September 2011.

10. By a memorandum dated 30 August 2011, the JSR/UNAMID informed the Applicant that after an initial assessment of the allegations she had made against three UNAMID international staff members, he had decided that no further action was warranted under ST/SGB/2008/5 and had closed those cases. On 31 August 2011, the JSR/UNAMID informed the Applicant of the appointment of a formal fact-finding panel to investigate her complaints of February and March 2011 and to also investigate allegations that had been made against her by a United Nations Volunteer (“UNV”) and a number of national staff members under her supervision.

11. Two fact-finding panels were appointed on 15 April 2012 to investigate the Applicant’s complaints and the complaints lodged against her by other staff members. Both fact-finding panels have completed their investigations and submitted reports, which are under review by the Administration.

12. On 26 October 2011, the Applicant filed the current Application with the Dispute Tribunal. The Respondent replied on 22 December 2011.

13. The Tribunal held a hearing on 6 November 2012. The Applicant and the Chief of UNAMID CDU (“Chief/CDU”) gave testimony.

Issues:

14. The issues in this case are as follows:

- i. Whether the Respondent promptly and appropriately addressed the Applicant’s complaint of prohibited conduct made pursuant to ST/SGB/2008/5;
- ii. Whether the Respondent violated the Applicant’s rights by not taking disciplinary action against the Complainants after SIU concluded in its December 2009 IR that their allegations were unsubstantiated;
- iii. Whether the Respondent had an obligation under section 5.18(a) of ST/SGB/2008/5 to provide the Applicant with a copy of the December 2009 SIU Investigation Report and if so, whether he failed to comply with this obligation;
- iv. Whether the Applicant’s credibility and professional reputation were damaged as a result of the 2009 complaints and investigation? If so, is she entitled to compensation?

Whether the Respondent promptly and appropriately addressed the Applicant’s complaint of prohibited conduct made pursuant to ST/SGB/2008/5.

15. The Respondent submits that the Applicant’s contention that the Administration failed to act on her complaint is moot because the responsible official reviewed and assessed her complaint before she filed her Application with the Tribunal. Is this an accurate interpretation of ST/SGB/2008/5? Does ST/SGB/2008/5 only require that the Responsible Official “review and assess” the complaint or are

there other obligations that must be fulfilled by the Organization to fully and adequately satisfy this Bulletin? The Tribunal holds that the Organization's obligations under ST/SGB/2008/5 are not limited solely to reviewing and assessing complaints. There are other obligations that must be wholly fulfilled to adequately address a complaint. These obligations are outlined in sections 5.14 to 5.20. This judgment, however, will focus specifically on sections 5.14 and 5.18.

Section 5.14

16. ST/SGB/2008/5 clearly delineates the entire procedure to be followed by the Organization upon receipt of a formal complaint of prohibited conduct. Section 5.14 provides that:

Upon receipt of a formal complaint or report, the responsible official will promptly review the complaint or report to assess whether it appears to have been made in good faith and whether there are sufficient grounds to warrant a formal fact-finding investigation. If that is the case, the responsible office shall promptly appoint a panel of at least two individuals from the department, office or mission concerned who have been trained in investigating allegations of prohibited conduct or, if necessary, from the Office of Human Resources Management roster.

17. The Tribunal is of the view that depending on the circumstances of the case, section 5.14 may have two elements that must be satisfied by the Organization. The first component of section 5.14 is the review and assessment of the complaint. The second component, which calls for the Responsible Official to "promptly" appoint a fact finding panel to investigate the allegations contained in the complaint, comes into play if the Responsible Official finds after the assessment that the complaint appears to have been made in good faith and that there are sufficient grounds to warrant a formal fact-finding investigation. Accordingly, the Tribunal will first examine UNAMID's actions against the first component of section 5.14 to determine whether the review and assessment were carried out "promptly" by the Responsible Official upon receipt of the complaint.

18. The record shows that the Applicant submitted two complaints of prohibited conduct to the Department of Peacekeeping Operations (“DPKO”) dated 23 February and 22 March 2011. DPKO forwarded the complaints to the Under-Secretary-General for DFS (“USG/DFS”) on 23 February 2011 and 22 March 2011, respectively. On 31 March 2011, the Assistant Secretary-General for DFS (“ASG/DFS”) sent an email to the Applicant acknowledging receipt of her complaints. On 6 April 2011, DFS transmitted the Applicant’s complaints to the JSR/UNAMID for assessment in accordance with ST/SGB/2008/5. Additionally, DFS requested that UNAMID provide it with a detailed update on the outcome of its assessment prior to undertaking any steps “including the appointment of a fact-finding investigation panel to investigate any aspects of the formal complaint”.

19. Between 6 April 2011 and 10 July 2011, UNAMID CDU conducted a review of the complaints to assess whether there were sufficient grounds to warrant a formal fact-finding investigation. The Chief/CDU explained that the review period was long because: (i) it was a complex matter involving a large number of persons, allegations and counter allegations dating back to 2008; (ii) since the Mission wanted to ensure that proper procedure was followed and the review was comprehensive, CDU reviewed the reports from 2008 to 2011 and summarized them; and (iii) the process entailed identifying the alleged offenders and witnesses and interviewing many of them again with respect to the new and old matters raised in the complaints. Subsequently, all the information gathered during CDU’s assessment was forwarded to the UNAMID Chief of Staff², for further review before being forwarded to the JSR/UNAMID for action. The Chief/CDU also explained that during the same period, the Mission was engaged in responding to MEU on the Applicant’s request for management evaluation and responding to the Office of Internal Oversight Services (“OIOS”) regarding the Applicant’s complaints.

² The UNAMID Chief of Staff is the supervisor of the Chief/CDU.

20. As requested by DFS, on 10 July 2011, the JSR/UNAMID transmitted the Mission's assessment of the complaints to DFS. On 27 July 2011, DFS informed JSR/UNAMID that the "[...]determination of appropriate action rests with you as the responsible official pursuant to ST/SGB/2008/5, and that you remain seized of this matter".

21. On 30 August 2011, the JSR/UNAMID informed the Applicant that after an initial assessment of her complaint, he had decided that no further action was warranted under ST/SGB/2008/5 against three UNAMID international staff members she had made allegations against. On 31 August 2011, the JSR/UNAMID informed the Applicant of the appointment of a formal fact-finding panel to investigate her remaining complaints and to also investigate renewed allegations that had been made against her by a United Nations Volunteer ("UNV") and a number of national staff members under her supervision.

22. Although the Applicant submitted her complaints to DPKO on 23 February and 22 March 2011, it is clear that the Responsible Official i.e. the JSR/UNAMID did not receive them until 6 April 2011. Based on the Chief/CDU's explanation of what the assessment process entailed, the Tribunal considers that the time taken to review and assess the complaint, from 6 April to 10 July 2011, was reasonable under the circumstances. Hence, the Respondent was in compliance with the first component of section 5.14.

23. As noted in paragraph 17 above, depending on the circumstances of the case, section 5.14 may have two elements that must be satisfied by the Organization. Based on the JSR/UNAMID's 31 August 2011 memo to the Applicant, the Tribunal can only conclude that after the assessment of the Applicant's complaint, the Responsible Officer found that the complaint appeared to have been made in good faith and that there were sufficient grounds to warrant a formal fact-finding investigation. Thus, this case is one of those in which the Organization was required to fulfill both components of section 5.14 i.e. "promptly" review and assess the complaint and

“promptly” appoint a fact-finding panel to investigate the allegations. Consequently, the next step is for the Tribunal to determine whether the Respondent complied with the provision in section 5.14 to appoint a fact-finding panel “promptly”.

24. The record shows that from 28 August 2011 through 22 December 2011, the Applicant was on home leave and sick leave in the United States. On 19 December 2011, the UNAMID Human Resources Office (HR) informed the Applicant via email not to return to Sudan because the Ministry of Foreign Affairs of the Republic of the Sudan had declared her as *persona non grata* on 18 December 2011. The Applicant complied with the instruction from UNAMID HR and reported to Entebbe, Uganda, at the end of her sick leave. She has not been allowed to return to Darfur and is still in Entebbe.

25. Two fact-finding panels were appointed on 15 April 2012. According to the Respondent’s 27 November 2012 closing submission, both fact-finding panels have completed their investigations and their final reports are being reviewed by the Administration. Thus, as at the time that the Applicant filed her Application with the Tribunal on 26 October 2011, a fact-finding panel had not been appointed to investigate her complaints.

26. When asked why it took so long for the fact-finding panels to be appointed, the Chief/CDU, gave evidence that the Mission could not proceed with the investigation in the Applicant’s absence from the Mission area as this would have been unfair. Additionally, UNAMID was struggling to find panel members who met the training/roster requirements set out in section 5.14. Furthermore, UNAMID had problems obtaining visas from the Government of Sudan for potential panel members to travel to Sudan for the investigation.

27. Bearing in mind that the fact-finding panels were not appointed until more than a year after the Applicant had filed her complaints, it would be a farce to conclude that UNAMID acted promptly in establishing the panels. However, in light

of the explanations provided for the delay, i.e. the Applicant's absence and the Mission's administrative/logistical problems, the Tribunal considers that the delay was unavoidable.

28. In light of the foregoing, the Tribunal concludes that the Respondent adequately, albeit not promptly, complied with his responsibilities under section 5.14 of ST/SGB/2008/5.

Section 5.18

29. Section 5.18 sets out several courses of action to be taken by the Responsible Official on the basis of the fact-finding report. These actions range from: (i) closing the case where the report indicates that no prohibited conduct took place, informing the individuals and providing them with a summary of the findings and conclusions of the investigation; (ii) the Responsible Official imposing managerial action if the report indicates that there was a factual basis for the allegations but not sufficient to justify the institution of disciplinary proceedings; and (iii) the Responsible Official referring the matter to the Assistant Secretary-General for Human Resources Management for disciplinary action where the report indicates that the allegations were well-founded.

30. In view of the fact that the Reports of the fact-finding panels are still being reviewed by the Administration, it can be inferred that no action has been taken by the JSR/UNAMID in accordance with section 5.18. Until the review is completed and the Applicant is informed of the outcome of the investigation and of the action taken, the Respondent is not in full compliance with ST/SGB/2008/5.

31. In light of the gravity of the allegations made by the Applicant in her complaints, it is regrettable that seven (7) months after the appointment of the fact-finding panels, she is still waiting for specific action to be taken. The Tribunal deems this to be unacceptable.

32. The Tribunal roundly rejects the Respondent's contention that this issue is moot because the responsible official reviewed and assessed her complaint before she filed her Application with the Tribunal. The issue can only become moot after section 5.18, which is part and parcel of the formal procedures set out in sections 5.11 to 5.20, has been complied with.

33. Accordingly, the Tribunal concludes that the Respondent has not fully complied with his obligations under section 5.18 of ST/SGB/2008/5 and as such, he has failed to take appropriate and prompt action to address the Applicant's complaints.

Whether the Respondent violated the Applicant's rights by not taking disciplinary action against the Complainants after SIU concluded in its December 2009 IR that their allegations were unfounded

34. The Applicant asserts that her rights as a staff member were violated because the Respondent failed to take any disciplinary measures against the Complainants after the SIU IR concluded that their allegations were unfounded and it was revealed that they used coercion to get other staff members to sign a petition against her.

35. The Respondent submits that the Administration's decision not to take disciplinary or other action against the Complainants was well-founded because the SIU IR did not indicate that the allegations against the Applicant were unfounded and based on malicious intent as required by section 5.19 of ST/SGB/2008/5. Additionally, the Respondent submits that the instigation of disciplinary proceedings against a staff member is the Administration's privilege.

Considerations

36. Section 2.3 of ST/SGB/2005/21 provides that:

The transmission or dissemination of unsubstantiated rumours is not a protected activity. Making a report or providing information that is intentionally false or misleading constitutes misconduct and may result in disciplinary or other appropriate action.

37. Section 5.19 of ST/SGB/2008/5 provides that:

Should the report indicate that the allegations of prohibited conduct were unfounded and based on malicious intent, the Assistant Secretary-General for Human Resources Management shall decide whether disciplinary or other appropriate action should be initiated against the person who made the complaint or report.

38. In the present case, the SIU IR concluded that the allegations of prohibited conduct were unsubstantiated but did not make a finding as to whether the complaints were based on malicious intent. Neither did the SIU IR make a finding as to whether the complaints were intentionally false or misleading.

39. In light of the fact that the SIU IR made no findings on malicious intent, the Chief/CDU, reviewed the SIU IR against section 2.3 of ST/SGB/2005/21 and section 5.19 of ST/SGB/2008/5. The Chief/CDU explained that the SIU IR contained many instances of behavior that could be perceived as prohibited conduct. Noting that ST/SGB/2008/5 takes into consideration the perception of the alleged victim to the prohibited conduct, he concluded that the complaints could have been based, either rightfully or wrongfully, on a perception of harassment on the part of the Applicant. In view of the imprecise nature of the evidence, he concluded that the two complaints were not “intentionally false or misleading” or based on “malicious intent” and no further action was taken.

40. The Tribunal finds the explanation of the Chief/CDU reasonable with respect to the complaint made by MN in August 2009 and agrees that no further action was needed.

41. With respect to the September 2009 complaint submitted by the 46 national staff members, it is worth noting that the SIU IR did conclude that one of the Complainants, one TA, had “cajoled” other national staff members to sign the complaint against the Applicant and that the complaint seems to have been triggered by “a quest to get even or fight back/resist a constituted authority”. The SIU IR also concluded that TA and five other national staff members had “acted with total disregard to the United Nations Core Values”. This conclusion was not elaborated on. The SIU IR also noted that the national staff members “appears [sic] to be intolerant of [the Applicant’s] gender as a woman and think she is not suppose [sic] to look them on the face while talking to them”. To determine whether some of the national staff members were indeed cajoled into signing the complaint and whether some of them were truly discriminating against the Applicant due to her gender, should there not have been an investigation? Would not such an investigation have affirmed or refuted whether these allegations of misconduct were well-founded?

42. Paragraph 2 of ST/AI/371 provides that where there is reason to believe that a staff member has engaged in unsatisfactory conduct for which a disciplinary measure may be imposed, the head of office or responsible officer shall undertake a preliminary investigation.

43. Additionally, in *Abboud* 2010-UNAT-100, the United Nations Appeals Tribunal (“the Appeals Tribunal”) held that the circumstances of the allegation of unsatisfactory conduct created an obligation on the part of the Respondent to initiate a preliminary investigation.

44. As in *Abboud*, in the light of the findings of alleged unsatisfactory conduct highlighted in the SIU IR on the part of TA and five other national staff members, the Respondent was obliged to initiate a preliminary investigation under ST/AI/371 (Revised Disciplinary Measures and Procedures) to determine whether or not disciplinary proceedings were necessary. Additionally, since the SIU IR also indicated that the Applicant appeared to have been the victim of gender discrimination, the Respondent should have reviewed and assessed this new

allegation under ST/SGB/2008/5. Unfortunately, neither of these investigations happened and said omission resulted in a violation of the Applicant's rights.

45. The Tribunal, however, rejects the Applicant's assertion that her rights were violated because the Respondent failed to take disciplinary action against the Complainants. In *Abboud* the Appeals Tribunal endorsed the jurisprudence of the former United Nations Administrative Tribunal in Judgment No. 1086, *Fayache* (2003) by holding that:

As a general principle, the instigation of disciplinary charges against a staff member is the privilege of the Organization itself, and it is not legally possible to compel the Administration to take disciplinary action against another party.

46. Additionally, in *Ryan* UNDT/2010/174, the Applicant requested that disciplinary proceedings be initiated against the persons allegedly responsible for acts of harassment and discrimination against him. The Dispute Tribunal held that "it is not for the Tribunal to order the Secretary-General to take the initiative of instituting disciplinary proceedings against a staff member". The Tribunal therefore rejected the request.

47. In light of the rulings in *Abboud* and *Ryan*, this Tribunal concludes that the Respondent did not violate the Applicant's rights by not taking disciplinary action against the Complainants.

Whether the Respondent had an obligation under section 5.18(a) of ST/SGB/2008/5 to provide the Applicant with a copy of the December 2009 SIU Investigation Report and if so, whether he failed to comply with this obligation.

48. The Applicant submits that UNAMID failed to provide her with a copy of the 15 December 2009 SIU IR and that this inaction violated her rights as set forth in section 5.18(a) of ST/SGB/2008/5.

49. The Respondent submits that under ST/SGB/2008/5, the Applicant did not have a right to a copy of the SIU IR but that she had a right to a summary of the findings and conclusions, which had been provided to her.

Considerations

50. Section 5.18(a) of ST/SGB/2008/5 provides:

On the basis of the report, the responsible official shall take one of the following courses of action:

(a) If the report indicates that no prohibited conduct took place, the responsible official will close the case and so inform the alleged offender and the aggrieved individual, giving a summary of the findings and conclusions of the investigation [...].

51. In August and September 2009, two complaints were filed against the Applicant for allegedly engaging in conduct prohibited by ST/SGB/2008/5. Section 5.14 of ST/SGB/2008/5 requires, *inter alia*, that the Responsible Official review and assess the complaint upon receipt to assess whether it appears to have been made in good faith and whether there are sufficient grounds to warrant a formal fact-finding investigation.

52. As part of the review and assessment, the UNAMID CDU referred the two complaints to the UNAMID SIU for a preliminary investigation under ST/AI/371 (Disciplinary Measures and Procedures). On 22 June 2010, the Applicant was informed by the OIC that due to the many inconsistencies and contradictions contained in the SIU IR, there was insufficient evidence to warrant any further action and/or investigation under section 5.14 of ST/SGB/2008/5 and as such, the matter was closed. The Applicant subsequently wrote to the UNAMID Administration on a number of occasions requesting a copy of the SIU IR but her requests went unheeded.

53. In a memorandum dated 6 April 2011 from the Department of Field Support (“DFS”) to the JSR/UNAMID, DFS noted that:

Although the investigations at issue appear to have been conducted by the UNAMID SIU, rather than by a fact-finding investigation panel as anticipated by ST/SGB/2008/5, DGS posits that the rights of the staff members involved would mirror that foreseen in section 5.18 of ST/SGB/2008/5 [...]”.

54. Thus, while UNAMID apparently used the wrong investigative tool during the review and assessment period (i.e. ST/AI/371)³, it did not change the fact that the complaints fell squarely under the remit of ST/SGB/2008/5 due to the nature of the complaints.

55. Under section 5.18(a), the Respondent was required to inform the Applicant of the closure of the case and to provide her with a summary of the findings and conclusions of the investigation, which was done on 7 July 2011. The Tribunal considers however that while section 5.18(a) does not expressly state that the alleged offender and the aggrieved individual should be provided with copies of the investigation report, this does not estop the Respondent from doing so once certain benchmarks have been met. In the Tribunal’s view, whether or not the Administration should provide an alleged offender and/or the aggrieved individual with a copy of an investigation report after a case is closed under section 5.18 is a decision that should be taken on a case by case basis after the totality of the circumstances have been taken into consideration.

56. In *Adorna* UNDT/2010/205, the Tribunal held that “the requirements of good faith and fair dealing required that the report should have been availed to the Applicant” due to the fact that: (i) the reasons he provided for his request were reasonable; (ii) the “extraordinary circumstances” of the case; and (iii) the fact that

³ The Applicant’s representative clarified at the hearing that the Applicant was not challenging the procedure adopted for reviewing the complaints against her and neither was she challenging the findings of the IR.

the report had been disclosed to a third party (i.e. the Ministry of External Affairs of India).

57. In the present case, the Applicant asserts that the IR contained evidence of “organized bias” against her on account of her gender and that the summary of findings and conclusions provided to her was inaccurate. The Tribunal notes however that the Applicant came to these conclusions after she had been giving a copy of the SIU IR unofficially by her supervisor. It appears that prior to the supervisor giving her the copy unofficially, the only reason she offered for her request was that it was a right she enjoyed under section 5.18(a) of ST/SGB/2008/5. As a result of the foregoing, the Tribunal concludes that the Applicant did not meet any of the criteria set out in *Adorna* and as such, she was only entitled to a summary of findings and conclusions. Therefore, the Respondent did not have an obligation, to provide her with a copy of the SIU IR itself.

58. It is noteworthy, however, that although UNAMID informed the Applicant of the closure of the case in June 2010, she was not, as is required by section 5.18(a), provided with the summary of findings and conclusions until more than a year later i.e. 7 July 2011. The Applicant was then placed in the stressful situation of trying to obtain the summary from UNAMID. After she had made several unsuccessful requests to the Mission leadership she was compelled to turn to DPKO/DFS and subsequently to MEU for enforcement of a right that is clearly stated in section 5.18(a) of ST/SGB/2008/5. It is also worth noting that even after DFS requested, on 6 April 2011, that UNAMID comply with section 5.18(a) “without delay”, the Mission dragged its feet for an additional three months before complying. The Tribunal deems this to be a procedural defect that violated the Applicant’s rights.

Whether the Applicant's credibility and professional reputation were damaged as a result of the 2009 complaints and investigation? If so, is she entitled to compensation?

59. The Applicant asserts that the Respondent has failed to take steps to repair her damaged credibility and professional reputation in the aftermath of the dismissal of complaints against her. She submits that she was initially sitting against a P-4 post and believes that the hostile environment she faced contributed to her not being selected for the post⁴. She asserts that the complaints and counter complaints contributed to her not being promoted.

60. In light of the fact that the Applicant is alleging that the complaints and counter complaints have negatively impacted on her reputation and credibility, the burden of proof lies with her. The Applicant has not placed any tangible evidence before the Tribunal that would make it conclude that she has met her burden of proof. Consequently, this claim must fail.

Conclusion

61. The Tribunal concludes that the Respondent has not fully complied with his obligations under ST/SGB/2008/5 with respect to the Applicant's complaints of prohibited conduct. The Tribunal also concludes that the Applicant's rights were violated in that: (i) Respondent failed to investigate allegations that were contained in the 2009 SIU IR that impacted on her; and (ii) the Respondent unduly delayed in complying with his obligation to provide her with a summary of findings and conclusions in relation to the 2009 complaints that had been lodged against her.

⁴ The Applicant joined UNAMID as a P3 but was granted an SPA to the P-4 level for serving as the OIC of the General Supply Unit.

Judgment

62. In light of the foregoing, the Tribunal orders the Respondent to pay the Applicant three months net base salary, at the rate applicable as of the date of this judgment, as compensation for his failure to adequately address her complaint of harassment and discrimination and for the procedural defects in the handling of the 2009 complaints against her.

63. This sum shall be paid within 60 days from the date the Judgment becomes executable, during which period interest at the US Prime Rate applicable as at that date shall apply. If the sum is not paid within the 60-day period, an additional five per cent shall be added to the US Prime Rate until the date of payment.

64. All other pleas are rejected.

(Signed)

Judge Vinod Boolell

Dated this 19th day of December 2012

Entered in the Register on this 19th day of December 2012

(Signed)

Jean-Pelé Fomété, Registrar, UNDT, Nairobi