



**Before:** Judge Thomas Laker

**Registry:** Geneva

**Registrar:** René M. Vargas M.

NIELSEN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Federica Midiri, UNFPA

## **Introduction**

1. On 16 December 2014, the Applicant, a former Procurement Assistant (G-5) in the United Nations Population Fund (“UNFPA”), Procurement Services Branch (“PSB”), Africa team, based in Copenhagen, filed an application challenging UNFPA decision not to review her complaints of “misconduct” filed against two of her colleagues in PSB, namely a Procurement Assistant, Mrs. X., and an “SMC” Innovation Specialist, Mr. Y.

## **Facts**

2. On 28 January 2013, the Applicant entered the service of UNFPA in the Africa team, PSB, on a one-year temporary appointment (“TA”). Effective 23 September 2013, she was placed on Special Leave with Full Pay (“SLWFP”), and was separated from UNFPA upon the expiration of her TA on 26 January 2014.

3. On 7 August 2013, the Applicant sent an email with the subject “report on unethical behaviour of [Mrs. X.]” to the newly appointed Human Resources Associate of UNFPA Copenhagen, copying her supervisors at PSB.

4. On 5 June 2014, the Applicant sent an email to the Head, Office of Audit and Investigations Services (“OAIS”, formerly the Division of Oversight Service (“DOS”)), UNFPA, complaining about alleged harassment against her and unethical behaviour by Mrs. X., and asking for an investigation into her complaint.

5. By email of 23 July 2014, the Applicant addressed to an Investigations Analyst, OAIS, a complaint against Mrs. X. alleging harassment.

6. In a phone conversation with OAIS on 10 September 2014, confirmed by email of 16 September 2014, the Applicant was notified that OAIS would not be triggering an investigation into her “complaints of harassment, bullying and abuse of authority against 12 staff members at PSB”, since OAIS had “concluded its

preliminary review of the matter and [had] found that a full investigation [was] not warranted”, therefore considering the matter “closed”.

7. By email of 20 September 2014, the Applicant submitted a request for management evaluation against OAIS decision not to trigger an investigation into Mrs. X.’s behaviour. She also requested management evaluation on 26 October 2014 with respect to the behaviour of Mr. Y. She received a reply covering her two requests on 31 October 2014 from the Executive Director, UNFPA, by which she was notified that OAIS decisions were “outside the scope of review by UNFPA management”.

8. The Applicant filed her application with the Tribunal on 16 December 2014, and the Respondent submitted his reply on 21 January 2015.

9. On 12 February 2015, the Applicant filed a motion requesting the Tribunal to hear the witness testimony of Mrs. X. She reiterated her request in another motion filed on 1 March 2015, in which she also requested the Tribunal to grant her compensation for the job loss she was suffering since the end of her employment with UNFPA.

10. By motion of 4 March 2015, she submitted a list of additional questions for Mrs. X. to answer. On 5 March 2015, the Respondent replied to the Applicant’s motion of 1 March 2015, and on 6 March 2015, the Applicant filed a motion asking for leave to file documents relating to the rebuttal of her performance evaluation, and to comment on the Respondent’s submission of 5 March 2015.

11. By Order No. 123 (GVA/2015) of 18 June 2015, the Tribunal requested the Respondent to file additional documentation with regard to the complaints filed to OAIS by the Applicant, which he did on 25 June 2015.

12. By Order No. 133 (GVA/2015) of 29 June 2015, the Tribunal informed the parties that the case would be decided on the papers, without further hearings or submissions.

### **Parties' submissions**

13. The Applicant's principal contentions are:

a. The refusal of OAIS to launch the requested investigations is unfounded, as her complaints were duly documented and the improper behaviour of her colleagues is evident based on all the proof she already submitted on many occasions;

b. Her case is not being treated seriously by UNFPA, and her managers treated her badly as well, instead of showing her support and integrating her into the PSB team; she was subject to harassment and abuse of authority when working at UNFPA, also from her colleagues at PSB.

14. The Respondent's principal contentions are:

a. OAIS did not receive any formal complaint from the Applicant against Mr. Y., hence the application is not receivable in his respect;

b. As for the other contested decision concerning the Applicant's complaints regarding Mrs. X., it was taken in compliance with UNFPA 2014 Charter of OAIS, according to which OAIS has to operate independently and has discretionary authority with respect to the matters it investigates;

c. Furthermore, the challenged administrative decision was lawful as it was taken in compliance with the requirements provided for in the 2013 UNFPA Policy on Harassment, Sexual Harassment and Abuse of authority. Indeed, OAIS determined that the incidents described by the Applicant in her complaints against Mrs. X. related to "interpersonal relationships amongst colleagues involving criticism and disagreements"; hence, they did not fall into the scope of prohibited conduct and did not meet a *prima facie* reasonable threshold level of misconduct. Moreover, the complaints were time-barred as it was confirmed that they referred to incidents that occurred prior to 22 September 2013, which is not within the six-month timeframe provided for by sec. 9.3.1 of the Policy;

d. In addition to the above, the Applicant did not discharge the burden of proving that she suffered any damage from the contested decisions; and

e. In view of this, the application should be rejected.

### **Consideration**

15. At the outset, it is necessary for the Tribunal to determine which decisions have been duly submitted to it. The Tribunal notes that the decision by OAIS not to trigger an investigation into the Applicant's complaints against her colleagues and to close the matter, was communicated to the Applicant in writing on 16 September 2014. It is this decision that the Applicant contests in her application to the Tribunal, with respect to the complaints filed against her colleagues Mrs. X. and Mr. Y.

#### *Complaints and request for management evaluation*

16. As far as Mrs. X. is concerned, the Applicant submitted her request for management evaluation of OAIS decision on 20 September 2014. The Applicant, hence, duly complied with the requirement of timely requesting management evaluation and filing an application before the Tribunal, pursuant to staff rule 11.2(c) and art. 8.1(d) of the Tribunal's Statute respectively.

17. However, the Tribunal notes that, pursuant to the available documents on file and the Respondent's explanations, no complaint was ever received by OAIS with respect to Mr. Y. It follows that no contestable administrative decision was ever taken with respect to Mr. Y. Therefore, the application before the Tribunal with respect to an alleged complaint against Mr. Y. is not receivable.

#### *Timeliness of the complaints against Mrs. X.*

18. The Tribunal further notes that the 2013 UNFPA policy on Harassment, Sexual Harassment and Abuse of Authority ("the Policy") establishes an informal and a formal process for dealing with complaints of that nature (see sec. 6 of the Policy, under the title "Dispute Resolution"). With regard to its scope of application, sec. 3.1 states that the policy applies "to UNFPA staff members as

well as to individual independent contractors”, who might be collectively referred to as “Personnel”. Under sec. 6.2 (“The Formal Process”), it is provided that:

Personnel who believe that they were subject to Harassment, Sexual Harassment or Abuse of Authority may submit a complaint to the Director, Division for Oversight Services (“DOS”), alleging that they are or were the victim of Harassment, Sexual Harassment or Abuse of Authority. Section 9 provides further details on the Formal Process.

19. With regard to sec. 9 of the Policy (Formal Process), its relevant parts for the present case read as follows:

**9. Formal Process**

9.1. Any Personnel and/or former Personnel may file a complaint of Harassment, Sexual Harassment or Abuse of Authority with the Director, DOS.

9.2. Should the Director, DOS, determine that the matter may appropriately be dealt with through an informal process, he or she may refer the matter to the Director, DHR, for an attempt at the informal resolution of the dispute, provided the complainant has given his/her consent to such referral.

**9.3. Time limits**

9.3.1 A formal complaint of Harassment, Sexual Harassment or Abuse of Authority may be addressed to the Director, DOS, by any Personnel within six (6) months from the date of the last incident of Harassment, Sexual Harassment or Abuse of Authority. These time limits may be extended by the Director, DOS, exceptional cases.

20. It is established that the Applicant sent an email on 7 August 2013 to a UNFPA Human Resources Associate regarding Mrs. X.’s alleged “unethical behaviour”. Based on the above provisions, one can establish that this communication did not meet the formal requirement of a complaint since it was not addressed to OASIS, as required by sec. 9.3.1 of the Policy.

21. It is also established that the Applicant filed a formal complaint against Mrs. X. on 5 June 2014 when she sent an email to the Head of OAIS—formerly DOS, as explained by the Respondent—complaining about Mrs. X.’s unethical behaviour and alleged harassment against her, and asking for an investigation into her complaint. On 23 July 2014, she filed an additional 43-page complaint against Mrs. X. with OAIS. These do meet the formal requirement of a complaint as per sec. 9.3.1 of the Policy.

22. The Tribunal notes that even if one considers the date of 5 June 2014 as the date of the Applicant’s first formal complaint to OAIS against Mrs. X., this date is almost eight months after the Applicant’s placement on SLWFP on 23 September 2013. The Applicant admitted, in her complaint of 23 July 2014, that she had “moved from PSB Africa team in end July 2013, so that PSB Africa team ... would stop bullying and harassing [her]”. This is in line with the Respondent’s statement made in his reply that during the month of August 2013, the Applicant was allowed to work from home.

23. It follows from this sequence of factual events and circumstances that the Applicant stopped being in interaction with Mrs. X., as well as with her other colleagues at work on a professional basis, if not already by August 2013, then, at the latest as of 23 September 2013, when she was formally placed on SLWFP and did not work anymore.

24. Therefore, in view of the above, it cannot but be considered that the date of the “last incident of Harassment” as provided for by sec. 9.3.1. of the Policy, if any, could only have happened on or before 23 September 2013. Hence, any complaint filed after the six-month time limit, which is applicable to each type of complainants—be it UNFPA “Personnel and/or former Personnel”—is to be considered untimely.

25. The Applicant cannot successfully argue that she only acquired effective knowledge of the bullying and harassment against her by Mrs. X. in April 2014, when documents were produced by the Respondent in the context of other proceedings in which she was involved before this Tribunal. Indeed, sec. 9.3.1 of

UNFPA Policy does not refer to the date of the “knowledge” of the last incident, but to the occurrence of the factual incident itself.

26. Based on the above, the Tribunal concludes that the Applicant’s complaints were not receivable by OAIS, and that OAIS refusal to conduct an investigation into these complaints did not result in a breach of any of the Applicant’s rights. It follows that the Tribunal cannot but reject the present application.

27. In view of the Tribunal’s conclusion, there is no need to rule on the Applicant’s various motions filed in the present case.

### **Conclusion**

28. In view of the foregoing, the Tribunal DECIDES:

The application is rejected in its entirety.

*(Signed)*

Judge Thomas Laker

Dated this 29<sup>th</sup> day of June 2015

Entered in the Register on this 29<sup>th</sup> day of June 2015

*(Signed)*

René M. Vargas M., Registrar, Geneva