



**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 19 January 2015, 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” against five PSB Africa team members, namely Mrs. V., Procurement Assistant, Mrs. W., Contract Associate, Mrs. X., Contracting and Administrative Assistant, Ms. Y., Procurement Assistant, and Mr. Z., Procurement Assistant.

## **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 13 September 2013, the Applicant sent an email under the subject “unethical and harmful actions from [Ms. W.] against me” to the newly appointed Human Resources Associate of UNFPA Copenhagen, copying her supervisors at PSB.

4. By email of 5 August 2014, the Applicant addressed to an Investigations Analyst, Office of Audit and Investigations Services (“OAIS”, formerly the Division of Oversight Service (“DOS”)), UNFPA, a complaint against Mrs. W. She did the same on 22 August 2014 regarding complaints against Ms. X., Ms. Y., and Mr. Z., arguing that these staff members were “constantly bullying” her and “applying efforts in order to destroy [her] career in PSB”.

5. 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”.

6. By email of 20 September 2014, the Applicant submitted a request for management evaluation against OAIS decision not to trigger an investigation into Mrs. W.’s behaviour. She received a reply to her request 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”.

7. On 10 November 2014, she submitted another request for management evaluation, this time against OAIS decision not to trigger an investigation into the behaviour of Mrs. X., Mr. Z. and another colleague. She received a reply to her request on 15 December 2014 from the Executive Director, UNFPA, in which he advised her that OAIS decisions were “outside the scope of review by UNFPA management”. As can be further inferred from that reply, the Applicant had also submitted, on 31 October 2014, another request for management evaluation, concerning OAIS decision not to conduct investigations into her complaint against Mrs. Y.

8. The Applicant filed her application with the Tribunal on 19 January 2015, and the Respondent submitted his reply on 24 February 2015.

9. 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.

10. 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**

11. 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, who were “spreading slanders, bullying, harassment and so on” against her 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; and

c. As she already requested the maximum compensation in previous cases she filed with the Tribunal, she does not request the “damage compensation” in the present case, but she seeks recognition that she had been subject to harassment and abuse of authority when working at UNFPA, and that the lack of favourable recommendation from UNFPA greatly impaired her current job search.

12. The Respondent’s principal contentions are:

a. OAIS did not receive any formal complaint from the Applicant against Mrs. V., and UNFPA never received a formal request for management evaluation regarding that colleague of the Applicant; hence the application is not receivable in her respect;

b. As for the other contested decisions, they were 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. The challenged administrative decisions were furthermore lawful as they were 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 her colleagues 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;

e. In view of this, the Respondent asks for the application to be rejected.

### **Consideration**

13. At the outset, it is necessary for the Tribunal to determine which decisions are being challenged by the Applicant and 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 alleged complaints filed against her colleagues Mrs. V., Mrs. W., Mrs. X., Mrs. Y. and Mr. Z.

#### *Request for management evaluation*

14. As far as Mrs. W. is concerned, the Applicant submitted her request for management evaluation on 20 September 2014, and with respect to her complaints against Mr. Z. and Mrs. X., on 10 November 2014. Concerning Mrs. Y., the reply sent by the Executive Director, UNFPA, to the Applicant by email of 15 December 2014 indicates that the latter had filed a request for management evaluation concerning that colleague on 31 October 2014.

15. In all of the above four instances, the Applicant duly complied with the requirement of timely requesting management evaluations and filing applications before the Tribunal, pursuant to staff rule 11.2(c) and art. 8.1(d) of the Tribunal's Statute respectively.

16. However, the Tribunal notes that, pursuant to the available documents on file, neither a request for management evaluation, nor even a complaint, was ever received from the Applicant with respect to Mrs. V. The application before the Tribunal with respect to an alleged complaint against Mrs. V. is therefore not receivable *ratione materiae*, as a request for management evaluation—a necessary first step to contest an administrative decision as per art. 8.1 (c) of the Tribunal’s Statute—is missing in this case (see *Servas* 2013-UNAT-349).

#### *Timeliness of the complaints*

17. 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.

18. 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 (emphasis in original).

19. Based on the above, it is established that in the present case, the Applicant filed her formal complaint against Mrs. W. on 5 August 2014 when she sent an email to OAIS (formerly DOS, as explained by the Respondent), and against her other colleagues Mrs. X, Mrs. Y. and Mr. Z., by doing the same on 22 August 2014. In contrast, the Applicant's email of 13 September 2013 to a UNFPA Human Resources Associate (and concerning only the alleged behaviour of Mrs. W.) did not meet the formal requirement of a complaint since it was not addressed to OAIS, as required by sec. 9.3.1 of the Policy.

20. With respect to the above four formal complaints duly addressed to OAIS, the Tribunal notes that they were submitted more than eleven (11) months after the Applicant's placement on SLWFP on 23 September 2013, and almost seven months after she was separated from UNFPA. The Applicant herself admitted, in a complaint she had filed against another of her colleagues and that is the subject of Case No. UNDT/GVA/2014/083, 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.

21. It follows from this sequence of factual events and circumstances that the Applicant stopped being in interaction with her 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.

22. 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.

23. The Applicant cannot successfully argue that she only acquired effective knowledge of the bullying against her 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.

24. 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.

### **Conclusion**

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

The application is rejected in its entirety.

(Signed)

Judge Thomas Laker

Dated this 29th day of June 2015

Entered in the Register on this 29th day of June 2015

(Signed)

René M. Vargas M., Registrar, Geneva