



**Before:** Judge Goolam Meeran

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

AWE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for the Applicant:**  
Self-Represented

**Counsel for the Respondent:**  
Nicole Wynn, ALS/OHRM  
Steven Dietrich, ALS/OHRM

## **Introduction**

1. The Applicant is a Resident Auditor in the Office of Internal Oversight Services (OIOS). He serves at the P-4 level and is based in Bamako, Mali.

## **Relevant Procedural History**

2. At the material time, the Applicant was the OIOS Chief Resident Auditor at the United Nations Assistance Mission for Iraq (UNAMI).

3. On 1 December 2015, the Applicant filed an Application (UNDT/NBI/2015/177) contending that the Respondent's decision, following the outcome of the investigation of his allegations pursuant to ST/SGB/2008/5 (Prohibition of Discrimination, Harassment, including Sexual Harassment and Abuse of Authority), was flawed in that it failed to grant him an effective remedy for the harm caused to him, and that the administration failed to provide him with a prompt and efficient internal means of redress.

4. On 7 December 2015, the Applicant filed this Application also relating to his complaint of harassment and abuse of authority, but specifically alleging that the actions of the UNAMI Chief of Mission Support (CMS) at the time was in breach of ST/SGB/2008/5 which were prejudicial to his rights as a staff member to be provided with a prompt and effective means of redress. He further alleged that the Special Representative of the Secretary-General erred in forwarding the matter to the Department of Field Support instead of taking action himself following the Fact Finding Panel's report.

5. The similarity between the two cases was that they shared the same factual background. Both Applications alleged that the Applicant's rights as a staff member were breached and that he was denied the protection afforded under ST/SGB/2008/5. The same Fact Finding Panel (FFP/Panel) interviewed the witnesses and produced a common Report.

6. Given the similarities in factual background, the Tribunal granted the Respondent's motion for an order for combined proceedings by Order No. 435 dated 19 September 2016 notwithstanding the fact that Mr. Kubis, the responsible officer made different decisions in relation to the complaint against the Chief of Staff (COS), Case No. UNDT/NBI/2015/177, and the CMS, Case No. UNDT/NBI/2015/179.

7. On 26 October 2016, the Tribunal issued Order No. 464 (NBI/2016) requiring further particulars from the Respondent with particular reference to the delays in concluding the complaint against the CMS.

8. The Tribunal reviewed the Respondent's response to Order No. 464 (NBI/2016) and found that although there were common questions of background fact, the decisions taken were not identical and that the applicable legal principles and issues appear potentially to be sufficiently different such that the order for combined proceedings needed to be reconsidered particularly given the fact that the complaint relating to the CMS is still under consideration.

9. On 10 November 2016, the Tribunal issued Order No. 479 (NBI/2016) rescinding its order for combined proceedings. Cases UNDT/NBI/2015/179 and UNDT/NBI/2015/177 were severed and the order for combined proceedings was discharged.

### **The Facts**

10. On 20 January 2014, the CMS refused to authorise the Applicant's Movement of Personnel for travel to Baghdad on an official mission pursuant to his duties as Chief Resident Auditor notwithstanding the fact that the Applicant's mission to Baghdad had already been approved by UNAMI's COS, and cleared by the Security Section.

11. Subsequently, at the Senior Management Team (SMT) meeting on 22 January 2014, the COS made statements about the Applicant which the Applicant submits were "false, defamatory, contained "malicious innuendo" and were prejudicial to

him. At the same meeting, the COS indicated, in the presence of the CMS, that she intended to convince the SRSG to have the Applicant withdrawn from the Mission because he had been seriously compromised.

12. Minutes of this meeting were circulated to about 25 staff members, who comprised, among others members of the management team, section chiefs and administrative assistants.

13. The Minutes stated:

Issue of the Auditor's two week pre-planning mission to Baghdad was discussed and rationale for it questioned. It seems that making up for financial loss incurred due to the move to Kuwait features prominently in the decision to visit Baghdad. However, the mission is strongly backed by the Chief of the Auditing Unit. CMS has suggested rotating out the auditor because he has been seriously compromised.

14. On 3 March 2014, the Applicant complained of abuse of authority and harassment on the part of the UNAMI COS and the former UNAMI CMS, in accordance with section 5.11 of ST/SGB/2008/5. The complaint was addressed to the former Under-Secretary-General, Department of Field Support (USG/DFS) with a copy to the Assistant Secretary-General, Office of Human Resources Management (ASG/OHRM).

15. On 17 April 2014 the complaint was referred by the ASG/OHRM to the Special Representative of the Secretary-General (SRSG) for his consideration and further action.

16. On 15 June 2014, SRSG Mladenov decided to convene a FFP pursuant to section 5.14 of ST/SGB/2008/5.

17. On 22 June 2014, the Applicant was informed that there would be delay in the investigation of his complaint because of the deterioration of the political and security situation in Iraq.

18. On 6 August 2014, the FFP was established and provided with its terms of reference.

19. Between 14 September 2014 and 18 February 2015, the Panel interviewed 14 witnesses. This list included the Applicant and staff members who were present at the meeting as well as the COS and CMS.

20. On 11 November 2014, the Applicant wrote to the Panel to enquire into the status of the investigation and noted that he was yet to receive a copy of his statement. The Panel responded that their report was still pending, but sent him a copy of his statement; which the Applicant reviewed and returned.

21. The Applicant was reassigned to serve in the United Nations Multidimensional Integrated Stabilisation Mission in Central African Republic (MINUSCA). He started in MINUSCA on 20 November 2014.

22. On 17 December 2014, the Applicant wrote to SRSG Mladenov complaining about the delay in reviewing his complaint. The Applicant stressed that he had an interest in “getting (his) name cleared sooner rather than later because retention of the offending statements constituted a source of continued injury to (his) dignity, character, personal and professional reputation”. This complaint was copied to the ASG/OHRM and the then USG/DFS.

23. The Applicant did not receive a response from any of the recipients.

24. On 13 January 2015, the Applicant requested management evaluation of the Respondent’s violation of his due process rights and for prompt consideration of his complaint pursuant to ST/SGB/2008/5.

25. On 20 January 2015, the Management Evaluation Unit (MEU) informed the Applicant that they found his request for review to be not receivable.

26. On 4 March 2015, the Secretary of the FFP informed the Applicant that its Report had been submitted to the SRSG. On 22 March 2015, SRSG Kubis was appointed to succeed Mr Mladenov as Head of Mission.

27. SRSG Kubis received the Panel's Report on 24 March 2015.

28. On 21 May 2015, SRSG Kubis informed the Applicant and the USG/DFS of the outcome of the investigation. The memorandum detailing the Panel's findings was dated 23 April 2015.

29. The Applicant was informed that as a result of the Panel's findings, a letter of reprimand had been placed in the COS's Official Personnel File. With regard to the CMS the matter was referred to the USG/DFS because she was no longer assigned to UNAMI.

30. On 9 June 2015, the USG/DFS acknowledged receipt of SRSG Kubis' referral. The USG/DFS determined that the complexity of the case required the involvement of an expert trained in dealing with complaints of this nature.

31. On 15 June 2015, the matter was forwarded to the USG of the Department of Peacekeeping Operations (USG/DPKO).

32. On 15 July 2015, the Applicant sought management evaluation of the SRSG's decision with regard to the CMS. The Applicant was specifically challenging the SRSG's decision to refer the matter to DFS.

33. On 16 July 2015, MEU acknowledged receipt of the Applicant's submission and informed him that a decision would be rendered no later than 29 August 2015.

34. On 5 October 2015, MEU decided that his request for management evaluation was not receivable.

35. In February 2016, the USG/DPKO referred the findings against the CMS to the ASG/OHRM. The matter remains under “review” by OHRM as at the time of this Judgment.

36. On 26 October 2016, the Tribunal issued Order No. 464 (NBI/2016) requiring further particulars regarding OHRM’s review from the Respondent.

37. Specifically, in response to the FFP’s findings against the CMS, the Respondent submitted:

Upon review of the Applicant’s complaint and the record, the USG/DPKO referred the Applicant’s complaint to the ASG/OHRM for possible disciplinary action. OHRM is currently reviewing the matter, including providing the CMS an opportunity to comment on the findings of the fact-finding panel. After the CMS’s comments are reviewed and further information gathered, if necessary, the ASG/OHRM will review the entire record and make a decision on whether to pursue this matter further. The ASG/OHRM has three courses of action open to her: (a) if it is considered that CMS has provided a persuasive account of events which would warrant closure of the disciplinary process, the ASG/OHRM will close the matter; (b) depending on circumstances of the matter, instead of closing the disciplinary process with no action, the ASG/OHRM may decide to take administrative action and then close; and (c) if it is considered there is sufficient evidence to proceed with imposing a disciplinary measure, the ASG/OHRM will make a recommendation to the Under-Secretary-General Department of Management (USG/DM) on appropriate action to be taken in this case. If the matter is referred to the USG/DM for disciplinary action, the USG/DM will make the final decision on whether facts have been established and if so, the disciplinary sanction to be imposed.

### **Considerations**

38. In a detailed and thorough examination of the allegations and the responses of various interviewees the Panel expressed their conclusions upholding the factual basis of the complaints. In particular the Panel found, inter alia, that there had been abuse of power and authority in violation of staff rule 1.2(q) and a violation of the provisions of art. 101(3) of the Charter of the United Nations, and the core values set out in former staff regulation 1.2(a) and former staff rules 101.2(d),

201.2(d) and 301.3(d), which provide that every staff member has the right to be treated with dignity and respect:

[B]y making unsubstantiated and derogatory remarks against [the Applicant] in the presence of others and by circulating the minutes of the meeting in which such remarks had been affixed, Mr Rutgers and Ms Yasin failed to uphold the core value of professionalism and live up to the standards of efficiency and competence expected of them, in addition to creating a more challenging and possibly hostile working environment for [the Applicant];

[B]y attempting to have [the Applicant] removed from UNAMI on unsubstantiated grounds, Ms Yasin failed to uphold the core value of integrity and the standard of efficiency.

39. It is the Respondent's submission that a decision in respect of Ms. Yasin

has taken longer due to a number of factors, including Ms. Yasin's move back to UN Headquarters in New York and outside of the authority of the UNAMI SRSG, the consideration of the Applicant's complaint with an overlapping second complaint in order to avoid the duplication of efforts, the lengthy record in the case, and the decision to refer the complaint for possible disciplinary action.

40. In *Nguyen-Kropp & Postica*, the Appeals Tribunal directed that<sup>1</sup>

... tribunals should not interfere with matters that fall within the Administration's prerogatives, including its lawful internal processes, and that the Administration must be left to conduct these processes in full and to finality.

41. Given the Respondent's response to Order No. 464 (NBI/2016) indicating that the internal processes have not yet reached finality, the Tribunal finds that it would not be appropriate to consider the matter until such time as all applicable and relevant procedures have been concluded. It will then be open to the Applicant, if he is dissatisfied with the outcome, to request management evaluation and, if appropriate, to file fresh proceedings before the Tribunal.

42. This Application is premature since no final administrative decision has been taken in relation to the complaint against Ms Yasin.

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<sup>1</sup> 2015-UNAT-509.



**Judgment**

43. The Application is dismissed.

*(Signed)*

Judge Goolam Meeran

Dated this 18<sup>th</sup> day of November 2016

Entered in the Register on this 18<sup>th</sup> day of November 2016

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi