Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Nerea Suero Fontecha

YASIN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Daniel Trup, OSLA

Counsel for Respondent:
Susan Maddox, ALS/OHRM, Secretariat
Miryoung An, ALS/OHRM, Secretariat

Introduction

1. The Applicant, a staff member serving as a Senior Administrative Officer at the P-5 level, step 8, in the Department of Field Support ("DFS") in New York, filed an application contesting "the decision to place a letter of reprimand on [her] official status file following a disciplinary investigation" that was conducted while she was working for the United Nations Assistance Mission in Iraq ("UNAMI") from February 2013 to February 2015 as Chief of Mission Support ("CMS"). The Applicant's requested relief is "that the decision dated 17 January 2017 to impose a written reprimand be rescinded".

2. The Respondent contends that the application should be dismissed in its entirety, and that the issue of remedies does not arise since the Applicant does not seek compensation.

Factual background

3. The facts, as agreed by the parties in their joint submission dated 20 July 2017, are as follows (emphasis omitted):

> … Throughout the relevant period in question, the procedures governing the Audit process are contained in the document titled "Audit Manual" produced by [the] Office of Internal Oversight Services (OIOS).
>
> … Between February 2013 and February 2015, the Applicant worked as Chief of Mission Support at the United Nations Assistance Mission in Iraq (UNAMI).
>
> … On 2 November 2012, [name redacted, Mr. EA] was appointed as the Chief Resident Auditor within UNAMI to be based in Baghdad. Subsequently, on 19 November 2012, [Mr. EA] together with the UNAMI OIOS [team] was relocated to Kuwait. [name redacted, Mr. MR], Chief of Staff ["CoS"], UNAMI, informed [name redacted, Ms. EB], Director, Internal Audit Division, OIOS, of the decision to move the audit team to Kuwait. According to [Ms. EB], [Mr. MR] told her that the move was "due to the Syria crisis and other security

concerns" and in order to "release space/accommodations for staff from [the United Nations] agencies, funds and programs". [Mr. EA and Ms. EB] were under the impression that the relocation of the audit team to Kuwait was temporary, and that the matter would be revisited upon the improvement of the security situation in Baghdad.

… The entitlements, benefits and allowances of staff members in Baghdad and in Kuwait differed. Serving in Iraq was financially more beneficial than serving in Kuwait. No subsequent discussions over relocation of the audit team back to Baghdad took place and no measures were taken to mitigate the monetary loss to [Mr. EA].

… On 18 March 2013, while [Mr. MR] visited Headquarters in New York, he discussed with [Ms. EB] the decision to relocate the audit team to Kuwait. [Ms. EB] asked [Mr. MR] about whether the Rest and Recuperation (R&R) entitlement and the cycle of four weeks for any staff travelling to Iraq would apply to the auditors even though they were located in Kuwait. [Ms. EB] stated that she did not remember discussing any other issues apart from R&R entitlements.

… [Mr. MR], [CoS] in UNAMI, had different recollection of the conversation he had with [Ms. EB] in March 2013. According to [Mr. MR], "[Ms. EB] went to a great length on how the decision of the Office of the [Special Representative of the Secretary-General, ("SRSG")] had negatively impacted her team … Then [Ms. EB] went on to propose that [UNAMI] consider allowing her team to engage in [a] mission to Iraq of sufficient duration that would allow them to make up for their entitlements".

… On or around 12 January 2014, the Applicant became aware that [Ms. EB] had submitted an Interoffice Memorandum to the [SRSG] notifying him of a planned OIOS audit of fleet management. The Interoffice Memorandum specified that:

> i. IAD would wish to meet the SRSG or the responsible manager or representative to discuss the audit;
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> ii. The purpose of the audit was to examine control and processes in fleet management and make recommendations for improvements;
>
> iii. The IAD team would consist of [Mr. EA] (Chief Resident Auditor), [name redacted, Mr. SH] and [name redacted, Ms. DC] and would report to [Ms. EB];
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> iv. The plan was to conduct fieldwork in Baghdad, Erbil and Kuwait over the period January 2014 to March 2014.

… The Interoffice Memorandum also attached [the] Internal Audit Protocol including those for the consultation process and indicated that the audit team would contact the SRSG's office shortly to arrange an entry conference.

… On 15 January 2014, the Applicant received an email directly from [Mr. EA]. In this email [Mr. EA] wrote the following:

> "As you are aware we have sent out the audit notification letter for the above audit and I intend to come to Baghdad for about a week's planning visit (from Tuesday) before the commencement of the audit. I will be in touch mostly with the Chief of Transport, [to] who[m] I will send a list of requirements today. We will subsequently come in February for the field work at which time we will have the entry conference, so this is essentially a courtesy notification.
>
> I am sure that I will see you when I come, although the entry conference will happen later".

… On 19 January 2014, the Applicant replied to [Mr. EA] stating the following:

> "Yes, we received the audit notice. Grateful if you could clarify whether it is standard practice for the visit to take place prior to the entry conference. Thank you".

… On the same day, [Mr. EA] replied to the Applicant stating the following:

> "This is just a planning visit not by the whole team to update our understanding of the system. It is usually standard practice except that we have been involved more with horizontal audits lately and the audit plans are prepared centrally by [Headquarters]. We are not auditing at this time but we will request information and get a general overview of the systems in place. Please let me know if you will require any further clarification".

… On 19 January 2014, [Mr. EA] submitted his movement of personnel ["MOP"] form for a 12-day trip to Baghdad, departing Kuwait on 21 January 2014 and returning on 2 February 2014. The MOP form submitted by [Mr. EA] stated that the purpose of the visit was "audit of fleet management". On the same form, [Mr. EA] stated that:

> "I certify that video conference and audio-conference, online meetings and other remote practices have been carefully reviewed and found not to be effective for the objective of this travel".
>
> … On 19 January 2014, [Mr. MR] signed the MOP form submitted by [Mr. EA] and then sent it to the Applicant for final approval. The Applicant reviewed the request and highlighted concerns that she had regarding the reasons provided for [Mr. EA's] visit.
>
> … On 20 January 2014, [Mr. MR] withdrew his signature from the MOP that had initially been granted to [Mr. EA] after the Applicant had asked him to clarify further about [Mr. EA's] travel. [Mr. MR] stated that, after he had initially "signed the security clearance for the MOP", the Applicant indicated to him that she did not fully understand "the objective of such a long two week 'pre-audit' and suggested that [he] assist her in obtaining the clarity by putting [UNAMI] on hold by withdrawing the initial security clearance". [Mr. MR] went on to state that "in an effort to obtain clarity, I withdrew security clearance".

4. Further, as results from the Respondent's reply, the subsequent events occurred as follows:

> … After having exchanged a series of emails with [Mr. MR] on 20 January 2014, [Mr. EA] told [Ms. EB] that the Applicant was "behind all the drama" and [Ms. EB] telephoned the Applicant. During the telephone call, [Ms. EB] explained the audit process for the Applicant to understand the travel request made by [Mr. EA] for his travel to Baghdad. [Ms. EB] stated that the Applicant had a different understanding of audit fieldwork, and that the Applicant was "maybe of the view that [the Applicant was] a decision-maker in the approach [OIOS] should take in audit". According to the Applicant, during the phone call, she told [Ms. EB] that [Mr. EA] did not follow "the audit steps mentioned in the notification letter", and that "the notification letter would need to be amended to prevent future issues of this nature".
>
> … After the telephone call, [Ms. EB] advised [Mr. EA] to file a new MOP clarifying that the audit in question could not be achieved via videoconference. The only clarification added in [Mr. EA]'s second MOP was that the audit could not be conducted via videoconference, which [Mr. EA] claimed, in and of itself, was evident in the first MOP submitted since 'the portion that the Chief of Section signs already ha[d] a certification to say that it ha[d] been

> determined that the purpose of the trip [could] not be accomplished by [video teleconference ("VTC")].
>
> … [Mr. EA]'s new MOP was submitted for his travel to Baghdad from 28 January 2014 to 9 February 2014. [Mr. MR] approved the new MOP on 23 January 2014, and the security clearance was given on the same day. Following the approval from the Chief of Administration Services, UNAMI, on 26 January 2014, [Mr. EA] travelled to Baghdad on 28 January 2014.

Procedural history

5. On 3 March 2014, Mr. EA lodged a harassment complaint against the Applicant and Mr. MR, the then CoS, UNAMI, according to ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority). Mr. EA alleged that the Applicant and Mr. MR had abused their authority by the fact that they:

> a) Interfered with [the Applicant's] travel thereby preventing [him] from carrying out [his] audit duties in a timely manner, an action which was without reasonable cause and avoidable;
>
> b) Made malicious, unsubstantiated, ill-motivated and derogatory statements against [his] person on [or] about 22 January 2014;
>
> c) Despite knowing them to be false, allowed these statements to be published in the minutes of [UNAMI's] Senior Management Meeting … which were circulated to members of the Senior Management Team and an undetermined number of other staff including Section Chiefs, Administrative Assistants and others;
>
> d) Conspired to have [the Applicant] withdrawn from [UNAMI] by attempting to mislead [UNAMI's] [SRSG] based on their false and malicious allegations;
>
> e) Made comments and allowed innuendo to discredit [his] personal and professional integrity, character and standing among an undetermined number of colleagues;
>
> f) Incited others to form adverse opinions about [him] in order to disregard and disrespect [him];
>
> g) Created a hostile work environment for [him]; and
>
> h) Retaliated against [him] because of [his] decision to pursue a matter with [the United Nations Dispute Tribunal].

6. On 17 April 2014, the matter was referred to (name redacted, Mr. NM), a former SRSG of UNAMI.

7. On 6 August 2014, the SRSG convened a fact-finding panel pursuant to ST/SGB/2008/5.

8. On 11 August 2014, the fact-finding panel informed Mr. EA, the Applicant and Mr. MR of the allegations and of the convening of an investigation panel. The investigation was subsequently conducted and 14 witnesses including Mr. EA, the Applicant and Mr. MR were interviewed.

9. On 20 February 2015, the fact-finding panel issued its investigation report and issued an addendum to the report on 24 March 2015.

10. On 23 April 2015, (name redacted, Mr. JK), the new SRSG of UNAMI, sent a report to the Under-Secretary-General for Field Support ("USG/DFS") on the outcome of the investigation report. In this report, the SRSG mentioned that he had decided to issue a letter of reprimand to the Applicant, and that Mr. MR's conduct, "whilst unacceptable, [did] not warrant disciplinary action".

11. On 9 June 2015, the USG/DFS forwarded the SRSG's report and the investigation report to the Under-Secretary-General for Peacekeeping Operations ("USG/DPKO").

12. In February 2016, the USG/DPKO referred both reports to the Assistant Secretary-General for Human Resources Management ("ASG/OHRM") for appropriate action.

13. On 3 October 2016, the Chief of Human Resources Policy Service of the Office of Human Resources Management ("OHRM") sent a memorandum dated 28 September 2016 to the Applicant informing her that it had been decided that formal allegations of misconduct would be issued against her. The memorandum mentioned

that it was alleged that the Applicant had harassed, and/or abused her authority towards Mr. EA, with no reasonable justification or factual basis:

> a) On 21 January 2014, by making derogatory comments about [Mr. EA] and his purpose of travel to Baghdad in a meeting of senior staff members of UNAMI.
>
> b) On or around 20 January 2014, by taking actions to ensure the [MOP] request from [Mr. EA] for his official travel to Baghdad would be withheld.

The memorandum requested the Applicant to provide a response to the allegations of misconduct made against her within two weeks.

14. On 6 October 2016, the Applicant sent an email to OHRM requesting supporting documents that were not included in the CD-ROM provided to her along with the memorandum of 28 September 2016.

15. On 7 October 2016, OHMR replied to the Applicant promising the delivery of the CD-ROM and granting her an extension of time to provide her response until 21 October 2016.

16. On 7 October 2016, the Applicant responded to OHRM asking for a further extension of the deadline until 11 November 2016 since she had sought the assistance of the Office of Staff Legal Assistance ("OSLA"). She also asked OHRM to send all supporting documentation directly to OSLA.

17. On 7 October 2016, OHRM replied to the Applicant granting her an extension of the deadline until 11 November 2016.

18. On 26 October 2016, the Applicant provided her response to the allegations of misconduct.

19. On 17 January 2017, the ASG/OHRM sent a letter to the Applicant notifying her that, following the investigation that was conducted into the harassment allegations Mr. EA had lodged against her on 3 March 2014, she had decided to issue the Applicant a letter of reprimand. The ASG/OHRM indicated that a letter of

reprimand is an administrative measure and that it would be placed in her official status file. She also required the Applicant to undertake an on-site training course with a focus on communication and problem-solving skills.

20. On 20 March 2017, the Applicant filed her application with the Dispute Tribunal.

21. On 20 March 2017, in accordance with art. 8.4 of the Dispute Tribunal's Rules of Procedure, the Registry transmitted the application to the Respondent, instructing him to file his reply by 19 April 2017.

22. On the same day (20 March 2017), the case was assigned to the undersigned Judge.

23. On 7 April 2017, the Respondent filed his reply arguing, *inter alia*, that the application should be dismissed.

24. On 12 May 2017, by Order No. 94 (NY/2017), the Tribunal instructed the parties to inform the Tribunal whether they consented to enter into discussions for an informal resolution of the case. The parties were also instructed to participate in a Case Management Discussion ("CMD") on 6 June 2017 at the courtroom of the Tribunal in New York.

25. On 17 May 2017, the parties filed a joint submission in response to Order No. 94 (NY/2017) dated 12 May 2017, indicating that they did not wish to enter into informal resolution of the case and requesting the Dispute Tribunal to continue with formal proceedings.

26. At the CMD that took place on 6 June 2017, the Applicant was represented by her Counsel, Mr. Daniel Trup, together with his colleague, Ms. Natalie Dyjakon, and the Respondent was represented by his Counsel, Ms. Miryoung An.

27. Upon the Tribunal's inquiry, the Applicant's Counsel informed the Tribunal that the Applicant was amenable to enter into discussions for an informal resolution

of the case. The Respondent's Counsel indicated that informal resolution was unlikely given the Applicant's request was for the rescission of the reprimand. The Respondent's Counsel further indicated that since the contested decision did not involve a disciplinary measure, the settlement authority was with the Department of Management ("DM").

28. The Tribunal recommended both parties to enter into discussions for an informal resolution of the case and invited the Respondent's Counsel to inform his client, namely the Secretary-General, of the Tribunal's recommendation and to file a submission in writing by 20 June 2017, advising the Tribunal if he would consent to enter into discussions for an informal resolution of the present case either through the Office of the United Nations Ombudsman and Mediation Services ("Office of the Ombudsman") or through *inter partes* discussions.

29. The parties informed the Tribunal that no further written evidence was to be requested. The Applicant's Counsel requested a hearing to adduce oral evidence relating to the contested factual background and the Respondent's Counsel indicated that they would also request to call witnesses. The Tribunal instructed the parties that, should the parties not agree to enter into discussions for an informal resolution and to suspend the proceedings in the present case, they should file a joint submission, identifying the legal issues and the agreed and contested facts, and provide a list of proposed witnesses together with an explanation as to the relevance of each witness testimony together with agreed dates for a hearing.

30. On 6 June 2017, by Order No. 106 (NY/2017), the Tribunal instructed the parties to file a joint submission by 20 June 2017 informing the Tribunal on whether a) they would be amenable to enter into discussions for an informal resolution of the case either through the Office of the Ombudsman or *inter partes* discussions, and if so, the parties were to file a jointly-signed request for a suspension of the proceedings indicating the period; and b) in case the parties were not amenable to informal resolution, the parties were to file, by 21 July 2017, a jointly signed submission setting forth a list of agreed facts (if any), a list of agreed legal issues, a list of each

party's proposed witnesses together with a summary of the issues the witness were to address and an explanation as to their relevance to the case, and proposed dates for a hearing at which Counsel for each of the parties, the Applicant and the proposed witnesses were all available.

31. On 20 June 2017, the Respondent filed his response to Order No. 106 (NY/2017) informing the Tribunal that following a careful and comprehensive review of the record, and taking account of the overall circumstances surrounding this case, the Respondent confirmed the previous decision not to enter into discussions for an informal resolution and wished to proceed with a formal resolution of this matter.

32. On 20 July 2017, the parties filed a joint submission in response to Order No. 106 (NY/2017) dated 6 June 2017, in which the Dispute Tribunal ordered the parties to identify, *inter alia*, the agreed facts, legal issues, potential witnesses with a summary of the evidence to be given and its relevance and proposed dates for a hearing.

33. Having reviewed the parties' submissions, the Tribunal considered the oral evidence proposed by the parties consisting of the testimony of the Applicant and Mr. EA to be relevant in the present case. By Order No.157 (NY/2017) issued on 4 August 2017, the Tribunal granted the parties' request for oral evidence and instructed the parties and the witness Mr. EA to attend a hearing on the merits on 10 October 2017.

34. At the hearing on 10 October 2017, the Applicant was present personally and assisted by her Counsel, Mr. Daniel Trup, and the Respondent was represented by his Counsel, Ms. Miryoung An. At the start of the hearing, at the Tribunal's request, the Respondent's Counsel confirmed that the written reprimand contested in the present case is an administrative measure and not a disciplinary measure.

35. The Applicant's testimony was followed by the testimony of Mr. EA, who participated at the hearing via video conference.

36. At the end of the hearing, the Tribunal informed the parties that a transcript would be prepared and uploaded in the eFiling portal by the Registry and would be made available to the parties. Further, the Tribunal instructed the parties to file their written closing submissions one month after the transcript had been made available to the parties.

37. The Tribunal recommended the parties, while reviewing the entire evidence in the present case for the preparation of the written closing submissions, to continue exploring an informal resolution of the case either through the Office of the Ombudsman or through *inter partes* discussions.

38. On 24 November 2017, the Registry sent an email to the parties informing them that the transcript of the hearing had been made available to the Registry on 20 November 2017, that the assigned Judge had reviewed and approved it, and that it had been uploaded into the eFiling portal on 22 November 2017 and was accessible. The email also referred to an instruction of the assigned Judge ordering the parties to submit their written closing submissions by 26 December 2017.

39. On 26 December 2017, Counsel for the Applicant and Counsel for the Respondent submitted their respective written closing submissions.

Applicant's submissions

40. The Applicant's principal contentions may be summarized as follows:

a. The Applicant's role in UNAMI was that of Chief of Mission Support. The Administration, in their sanction letter, failed to recognise her role, responsibilities and accountability including personal financial liability in that regard. Principally, the Applicant's task was to ensure that the United Nations procedures and protocols were treated in an independent and objective manner vis-à-vis the function of the mission. Far from being a passive player within the UNAMI administration, the Applicant took her responsibilities seriously and professionally. The Applicant was aware of and complied with rules

governing both official visits and investigations. Both ST/AI/2013/3 (Official travel) and the OIOS Audit Manual envisage many of the preliminary steps to be taken electronically without the need to undertake expensive travel. Such steps allow the mission to control costs. As Chief of Mission Support, the Applicant had the primary duty in that regard;

b. Following Mr. EA's submission of his MOP, the initial request was sent to Mr. MR. Although Mr. MR had initially signed off on the MOP, it is evident that Mr. EA was the one to certify that "video conference and audio conference, online meetings and other remote business practices have been carefully reviewed and found not to be effective for the objective of this travel";

c. The Applicant's actions in raising her concerns to Mr. MR, knowing that other options for virtual meetings were available, should not be considered as amounting to harassment. It cannot be tenable that the Administration could punish a staff member for attempting, through legitimate channels and under the auspices of official responsibilities, to clarify details before agreeing to the costs of approving an MOP. The Applicant's actions should therefore be viewed in the context of her role as carrying out due diligence to ensure that rules and procedures were complied with for the benefit of the Organization.

Respondent's submissions

41. The Respondent's principal contentions may be summarized as follows:

a. The Applicant's contentions do not displace the evidence in the record;

b. The Applicant's contention that Mr. MR withdrew his approval "under his own volition when recognising his failure to adequately scrutinise the MOP" is not consistent with the record. Mr. MR stated that he cancelled his approval because of the Applicant's raising "serious reservations" over the

MOP request. Further, why Mr. MR withdrew his approval does not address the key issue in the case, namely, the Applicant's communication skills. It is, therefore, not relevant who had, in fact, cancelled the MOP. The Applicant's contention that she undertook the actions in line with her official duties and responsibilities to control travel expenses, does not address the issue, namely, the Applicant's failure to address her concerns in a constructive and open manner. The Applicant chose not to engage in a further discussion with Mr. EA or with OIOS about her suspicion and chose to contact Mr. MR and spread her suspicion. Although no evidence in the record shows a reasonable justification or factual basis for her suspicion about Mr. EA's motive, the Administration did not reprimand the Applicant for having suspicions or concerns over an administrative matter within her purview. The reprimand is about the manner in which the Applicant addressed such suspicions or concerns.

c. Likewise, the Applicant's contentions about alleged procedural irregularities (e.g., lack of entry conference) and about alleged lack of merit in Mr. EA traveling to Baghdad (e.g., utilizing the mission's video- or tele-conferencing facilities in Kuwait could have better served the purpose of travel) do not address the Applicant's failure in communicating effectively and openly. In particular, with respect to the lack of entry conference, Mr. EA had already answered the Applicant's question via email and the record shows no indication that the Applicant was prevented from continuing her efforts to raise further questions directly with Mr. EA.

d. Contrary to the Applicant's contention, there is no evidence showing that the Applicant had, in fact, undertaken any due diligence effort to verify her suspicion over Mr. EA's motives before or after she raised the suspicion with Mr. MR. Given the seriousness of her suspicion, the Applicant should have had a factual basis for expressing such suspicion before raising it with Mr. MR. Contrary to the Applicant's contention that her actions should be

viewed in the context of her role as "carrying out due diligence", the record shows no information as to what due diligence had been carried out by the Applicant.

e. In light of the foregoing, the facts underpinning the written reprimand had been established by reliable evidence.

f. The Applicant's procedural fairness rights were respected.

g. ST/AI/371 (Revised disciplinary measures and procedures), as amended, authorizes the ASG/OHRM to decide to close a disciplinary case, and impose one or more of the non-disciplinary measures indicated in staff rule 10.2(b)(i) and (ii), where appropriate.

h. In accordance with staff rule 10.2(c), prior to the issuance of the written reprimand, a staff member should be provided with the opportunity to comment on the facts and circumstances. By the memorandum dated 28 September 2016, the Applicant was provided with the opportunity to comment on the facts and circumstances of this case.

i. As noted in the letter dated 17 January 2017, the Applicant's procedural fairness rights were respected throughout the investigation and disciplinary process. In particular, the Respondent notes that: (i) the Applicant was interviewed by the fact-finding panel, and asked about all material aspects of the case; (ii) the Applicant was also provided with the previous drafts of her interview statements and invited to provide her input, which she did; (iii) the Applicant was provided with all supporting documentation, and given the opportunity to comment on the allegations against her; (iv) the Applicant was also informed of her right to seek the assistance of counsel; (v) the Applicant was afforded an opportunity to request an extension of time in which to submit her comments; (vi) the Applicant was also provided with additional information pursuant to her request made during the disciplinary process, and given an opportunity to submit further comments thereon; and

(vi) her comments during the investigation and the disciplinary process were duly considered.

j. The written reprimand is not disproportionate.

k. The Applicant did not raise a contention that the written reprimand is disproportionate. As indicated in the letter dated 17 January 2017, the Respondent took into account mitigating circumstances in reaching the conclusion that a written reprimand would be appropriate. In particular, it was considered that: (i) the investigation did not show that the Applicant engaged in repeated harassing conduct towards Mr. EA; (ii) the Applicant has served the Organization for approximately 27 years, including in mission areas; and (iii) it took more than two years to resolve the matter after it was brought to the attention of the Organization.

l. The Application should be dismissed in its entirety, and that, therefore, the issue of remedies does not arise. In the Application, the Applicant did not seek compensation.

Considerations

Applicable law

42. Articles 2 and 8 of the Statute of the Dispute Tribunal state, in relevant parts:

> Article 2
>
> 1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:
>
> (a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance;

(b) To appeal an administrative decision imposing a disciplinary measure;

(c) To enforce the implementation of an agreement reached through mediation pursuant to article 8, paragraph 2, of the present statute.

…

Article 8

1. An application shall be receivable if:

(a) The Dispute Tribunal is competent to hear and pass judgement on the application, pursuant to article 2 of the present statute;

(b) An applicant is eligible to file an application, pursuant to article 3 of the present statute;

(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required; and

(d) The application is filed within the following deadlines:

(i) In cases where a management evaluation of the contested decision is required:

a. Within 90 calendar days of the applicant's receipt of the response by management to his or her submission; or

b. Within 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for other offices;

43. Articles 7 and 35 of the Dispute Tribunal's Rules of Procedure on time limits for filing applications and waiver of time limits, respectively, state in relevant parts:

Article 7

1. Applications shall be submitted to the Dispute Tribunal through the Registrar within:

(a) 90 calendar days of the receipt by the applicant of the management evaluation, as appropriate;

(b) 90 calendar days of the relevant deadline for the communication of a response to a management evaluation, namely, 30 calendar days for disputes arising at Headquarters and 45 calendar days for disputes arising at other offices; or

(c) 90 calendar days of the receipt by the applicant of the administrative decision in cases where a management evaluation of the contested decision is not required.

…

Article 35

Subject to article 8.3 of the statute of the Dispute Tribunal, the President, or the judge or panel hearing a case, may shorten or extend a time limit fixed by the rules of procedure or waive any rule when the interests of justice so require.

44. Staff rule 10.1 on misconduct states that:

(a) Failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant may amount to misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct.

(b) Where the staff member's failure to comply with his or her obligations or to observe the standards of conduct expected of an international civil servant is determined by the Secretary-General to constitute misconduct, such staff member may be required to reimburse the United Nations either partially or in full for any financial loss suffered by the United Nations as a result of his or her actions, if such actions are determined to be willful, reckless or grossly negligent.

(c) The decision to launch an investigation into allegations of misconduct, to institute a disciplinary process and to impose a disciplinary measure shall be within the discretionary authority of the Secretary-General or officials with delegated authority.

45. Staff rule 10.2 on disciplinary measures states, in relevant parts, that:

(a) Disciplinary measures may take one or more of the following forms only:

(i) Written censure;

(ii) Loss of one or more steps in grade;

(iii) Deferment, for a specified period, of eligibility for salary increment;

(iv) Suspension without pay for a specified period;

(v) Fine;

(vi) Deferment, for a specified period, of eligibility for consideration for promotion;

(vii) Demotion with deferment, for a specified period, of eligibility for consideration for promotion;

(viii) Separation from service, with notice or compensation in lieu of notice, notwithstanding staff rule 9.7, and with or without termination indemnity pursuant to paragraph (c) of annex III to the Staff Regulations;

(ix) Dismissal.

(b) Measures other than those listed under staff rule 10.2 (a) shall not be considered to be disciplinary measures within the meaning of the present rule. These include, but are not limited to, the following administrative measures:

(i) Written or oral reprimand;

…

(c) A staff member shall be provided with the opportunity to comment on the facts and circumstances prior to the issuance of a written or oral reprimand pursuant to subparagraph (b) (i) above.

46. Staff rule 10.3 on due process in the disciplinary process states that:

(a) The Secretary-General may initiate the disciplinary process where the findings of an investigation indicate that misconduct may have occurred. No disciplinary measure may be imposed on a staff member following the completion of an investigation unless he or she has been notified, in writing, of the formal allegations of misconduct against him or her and has been given the opportunity to respond to those formal allegations. The staff member shall also be informed of the right to seek the assistance of counsel in his or her defence through the Office of Staff Legal Assistance, or from outside counsel at his or her own expense.

(b) Any disciplinary measure imposed on a staff member shall be proportionate to the nature and gravity of his or her misconduct.

(c) A staff member against whom disciplinary or non-disciplinary measures, pursuant to staff rule 10.2, have been imposed following the completion of a disciplinary process may submit an application

challenging the imposition of such measures directly to the United Nations Dispute Tribunal, in accordance with chapter XI of the Staff Rules.

(d) An appeal against a judgement of the United Nations Dispute Tribunal by the staff member or by the Secretary-General may be filed with the United Nations Appeals Tribunal in accordance with chapter XI of the Staff Rules.

47. Sections 9 and 10 of ST/AI/371, as revised by ST/AI/371/Amend.1, provide as follows:

9. Upon consideration of the entire dossier, the Assistant Secretary-General, Office of Human Resources Management, on behalf of the Secretary-General shall proceed as follows:

(a) Decide that the disciplinary case should be closed, and immediately inform the staff member that the charges have been dropped and that no disciplinary action will be taken. The Assistant Secretary-General may, however, decide to impose one or more of the non-disciplinary measures indicated in staff rule 10.2(b)(i) and (ii), where appropriate; or

(b) Should the preponderance of the evidence indicate that misconduct has occurred, recommend the imposition of one or more disciplinary measures.

Decisions on recommendations for the imposition of disciplinary measures shall be taken by the Under-Secretary-General for Management on behalf of the Secretary-General. The Office of Legal Affairs shall review recommendations for dismissal of staff under staff rule 10.2(a)(ix). Staff members shall be notified of a decision to impose a disciplinary measure by the Assistant Secretary-General for Human Resources Management.

10. A staff member against whom a disciplinary or a non-disciplinary measure has been imposed following the conclusion of the disciplinary process is not required to request a management evaluation, and may submit an application to the United Nations Dispute Tribunal in accordance with chapter XI of the Staff Rules. The submission of an application to the United Nations Dispute Tribunal contesting a disciplinary or non-disciplinary measure imposed following the conclusion of the disciplinary process shall be made within 90 calendar days of receiving notification of the decision. The filing of such an application shall not have the effect of suspending the measure.

48. Staff regulation 1.2 on basic rights and obligations of staff provides as follows:

> a) Staff members shall uphold and respect the principles set out in the Charter, including faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women. Consequently, staff members shall exhibit respect for all cultures; they shall not discriminate against any individual or group of individuals or otherwise abuse the power and authority vested in them;
>
> b) Staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status.
>
> …
>
> g) Staff members shall not disrupt or otherwise interfere with any meeting or other official activity of the Organization … nor shall staff members … engage in any conduct intended, directly or indirectly, to interfere with the ability of other staff members to discharge their official functions.

49. Sections 1.2, 1.4, 1.5, 2.1-2.4, 3.1-3.3, 5.3, 5.14-5.18, 5.20 and 6.5 of ST/SGB/2008/5 provide in the relevant parts as follows (footnotes omitted):

> 1.2 Harassment is any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person. Harassment may take the form of words, gestures or actions which tend to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another or which create an intimidating, hostile or offensive work environment. Harassment normally implies a series of incidents. *Disagreement on work performance or on other work-related issues is normally not considered harassment and is not dealt with under the provisions of this policy but in the context of performance management* (emphasis added).
>
> 1.4 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 his or her 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 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.

1.5 For the purposes of the present bulletin, discrimination, harassment, including sexual harassment, and abuse of authority shall collectively be referred to as "prohibited conduct".

2.1 In accordance with the provisions of Article 101, paragraph 3, of the Charter of the United Nations, and the core values set out in staff regulation 1.2(a) and staff rules 101.2(d), 201.2(d) and 301.3(d), every staff member has the right to be treated with dignity and respect, and to work in an environment free from discrimination, harassment and abuse. Consequently, any form of discrimination, harassment, including sexual harassment, and abuse of authority is prohibited.

2.2 The Organization has the duty to take all appropriate measures towards ensuring a harmonious work environment, and to protect its staff from exposure to any form of prohibited conduct, through preventive measures and the provision of effective remedies when prevention has failed.

2.3 In their interactions with others, all staff members are expected to act with tolerance, sensitivity and respect for differences. Any form of prohibited conduct in the workplace or in connection with work is a violation of these principles and may lead to disciplinary action, whether the prohibited conduct takes place in the workplace, in the course of official travel or an official mission, or in other settings in which it may have an impact on the workplace.

2.4 The present bulletin shall apply to all staff of the Secretariat. Complaints of prohibited conduct may be made by any staff member, consultant, contractor, gratis personnel, including interns, and any other person who may have been subject to prohibited conduct on the part of a staff member in a work-related situation.

3.1 All staff members have the obligation to ensure that they do not engage in or condone behaviour which would constitute prohibited conduct with respect to their peers, supervisors, supervisees and other persons performing duties for the United Nations.

3.2 Managers and supervisors have the duty to take all appropriate measures to promote a harmonious work environment, free of intimidation, hostility, offence and any form of prohibited conduct. They must act as role models by upholding the highest standards of conduct. Managers and supervisors have the obligation to ensure that complaints of prohibited conduct are promptly addressed in a fair and impartial manner. Failure on the part of managers and supervisors to

fulfil their obligations under the present bulletin may be considered a breach of duty, which, if established, shall be reflected in their annual performance appraisal, and they will be subject to administrative or disciplinary action, as appropriate.

3.3 Heads of department/office are responsible for the implementation of the present bulletin in their respective departments/offices and for holding all managers and other supervisory staff accountable for compliance with the terms of the present bulletin.

5.3 Managers and supervisors have the duty to take prompt and concrete action in response to reports and allegations of prohibited conduct. Failure to take action may be considered a breach of duty and result in administrative action and/or the institution of disciplinary proceedings.

5.14 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.

5.15 At the beginning of the fact-finding investigation, the panel shall inform the alleged offender of the nature of the allegation(s) against him or her. In order to preserve the integrity of the process, information that may undermine the conduct of the fact-finding investigation or result in intimidation or retaliation shall not be disclosed to the alleged offender at that point. This may include the names of witnesses or particular details of incidents. All persons interviewed in the course of the investigation shall be reminded of the policy introduced by ST/SGB/2005/21.

5.16 The fact-finding investigation shall include interviews with the aggrieved individual, the alleged offender and any other individuals who may have relevant information about the conduct alleged.

5.17 The officials appointed to conduct the fact-finding investigation shall prepare a detailed report, giving a full account of the facts that they have ascertained in the process and attaching documentary evidence, such as written statements by witnesses or any other documents or records relevant to the alleged prohibited conduct. This report shall be submitted to the responsible official normally no later than three months from the date of submission of the formal complaint or report.

5.18 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;

(b) If the report indicates that there was a factual basis for the allegations but that, while not sufficient to justify the institution of disciplinary proceedings, the facts would warrant managerial action, the responsible official shall decide on the type of managerial action to be taken, inform the staff member concerned, and make arrangements for the implementation of any follow-up measures that may be necessary. Managerial action may include mandatory training, reprimand, a change of functions or responsibilities, counselling or other appropriate corrective measures. The responsible official shall inform the aggrieved individual of the outcome of the investigation and of the action taken;

(c) If the report indicates that the allegations were well-founded and that the conduct in question amounts to possible misconduct, the responsible official shall refer the matter to the Assistant Secretary-General for Human Resources Management for disciplinary action and may recommend suspension during disciplinary proceedings, depending on the nature and gravity of the conduct in question. The Assistant Secretary-General for Human Resources Management will proceed in accordance with the applicable disciplinary procedures and will also inform the aggrieved individual of the outcome of the investigation and of the action taken.

5.20 Where an aggrieved individual or alleged offender has grounds to believe that the procedure followed in respect of the allegations of prohibited conduct was improper, he or she may appeal pursuant to chapter XI of the Staff Rules.

6.5 Once the investigation has been completed and a decision taken on the outcome, appropriate measures shall be taken by the head of department/office/mission to keep the situation under review. These measures may include, but are not limited to, the following:

(a) Monitoring the status of the aggrieved party, the alleged offender and the work unit(s) concerned at regular intervals in order to ensure that no party is subjected to retaliation as a consequence of the investigation, its findings or the outcome. Where retaliation is detected, the Ethics Office shall be promptly notified;

(b) Ensuring that any administrative or disciplinary measures taken as a result of the fact-finding investigation have been duly implemented;

(c) Identifying other appropriate action, in particular preventative action, to be taken in order to ensure that the objectives of the present bulletin are fulfilled. The Office of Human Resources Management may request information from the head of department or office, as necessary.

50. The Audit Manual of the Internal Audit Division of the Office of Internal Oversight Services ("IAD/OIOS") of 2009 provides as follows:

C.3 Audit engagement planning

C.3.4 Audit notification memorandum

Each audit engagement is formally opened by the issuance of … Audit Notification Memorandum drafted by the [Auditor-in-Charge, ("AIC")], reviewed by the Section Chief and signed by the Service Chief or at peacekeeping resident audit offices, by the Chief Resident Auditor (CRA) on behalf of the Service Chief.

…

C.3.5 Entry conference

A formal entry conference with the audited entity should be arranged in the timeframe indicated in the Audit Notification Memorandum. In preparation for the meeting, the AIC should gather background information to obtain an overview of the nature of the audited entity's mandate and operations, risk profile and the current issues it faces.

…

The AIC should coordinate the time and place for the entry conference meeting. The entry conference should be held prior to any travel to the audited entity's location. Therefore, for audits located in the field, the AIC should schedule the entry conference with key head office personnel and link relevant field office personnel by video- or tele-conference facilities where feasible. This is to ensure that pertinent issues facing the audited entity are identified at the appropriate level and the audit is focused on the areas of greatest relevance and risk. It also enables the field office to be better prepared for the audit before the arrival of the audit team.

51. E-Guide to the United Nations Departments of Peacekeeping Operations and Field Support ("e-Guide to UN DPKO and DFS") – A Resource for New Staff at Headquarters – 2008 provides as follows:

> Mission Chiefs
>
> …
>
> The … Chief of Mission Support (CMS) is the most senior [United Nations] official within the mission that is authorized to expend [United Nations] funds associated with the mission's allocated budget. Therefore, this is a critical function in all peacekeeping missions. The CMS may also be supported by two civilian subordinate officials: a Chief Administrative Services (CAS) and a Chief Integrated Support Services (CISS).
>
> Functions and activities - Civilian Mission Support:
>
> - Administrative services;
> - Procurement;
> - …
> - Communications;
> - Logistical support to all components;

Receivability

52. In the application filed on 20 March 2017, the Applicant contested the administrative measure of reprimand that was notified to her on 17 January 2017. The Tribunal notes that the present application was filed on 20 March 2017, within 90 days from the date of notification of the measure, and that the contested decision is not subject to a management evaluation. The Tribunal concludes that the application meets all the receivability requirements of art. 8 of the Dispute Tribunal's Statute and of staff rule 11.2(b).

On the merits

The imposition of the administrative (non-disciplinary) measure of a written reprimand

53. The Tribunal notes that staff rules 10.1, 10.2(b)(i) and (c), and 10.3 state as follows:

> Staff rule 10.1
>
> a) Failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant may amount to misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct.
>
> b) Where the staff member's failure to comply with his or her obligations or to observe the standards of conduct expected of an international civil servant is determined by the Secretary-General to constitute misconduct, such staff member may be required to reimburse the United Nations either partially or in full for any financial loss suffered by the United Nations as a result of his or her actions, if such actions are determined to be willful, reckless or grossly negligent.
>
> c) The decision to launch an investigation into allegations of misconduct, to institute a disciplinary process and to impose a disciplinary measure shall be within the discretionary authority of the Secretary-General or officials with delegated authority.
>
> Staff rule 10.2(b)(i) and (c)
>
> b) Measures other than those listed under staff rule 10.2(a) shall not be considered to be disciplinary measures within the meaning of the present rule. These include, but are not limited to, the following administrative measures:
>
> i) Written or oral reprimand;
>
> …
>
> c) A staff member shall be provided with the opportunity to comment on the facts and circumstances prior to the issuance of a written or oral reprimand pursuant to subparagraph (b)(i) above.

Staff rule 10.3

> a) The Secretary-General may initiate the disciplinary process where the findings of an investigation indicate that misconduct may have occurred. No disciplinary measure may be imposed on a staff member following the completion of an investigation unless he or she has been notified, in writing, of the formal allegations of misconduct against him or her and has been given the opportunity to respond to those formal allegations. The staff member shall also be informed of the right to seek the assistance of counsel in his or her defence through the Office of Staff Legal Assistance, or from outside counsel at his or her own expense.
>
> b) Any disciplinary measure imposed on a staff member shall be proportionate to the nature and gravity of his or her misconduct.
>
> c) A staff member against whom disciplinary or non-disciplinary measures, pursuant to staff rule 10.2, have been imposed following the completion of a disciplinary process may submit an application challenging the imposition of such measures directly to the United Nations Dispute Tribunal, in accordance with chapter XI of the Staff Rules.
>
> d) An appeal against a judgement of the United Nations Dispute Tribunal by the staff member or by the Secretary-General may be filed with the United Nations Appeals Tribunal in accordance with chapter XI of the Staff Rules.

54. It clearly results that the Secretary-General, as the Chief Administrator, or the official with the delegated authority, has the discretionary authority to launch an investigation into allegations of misconduct, to institute a disciplinary process when the findings of an investigation indicate that misconduct may have occurred, and to impose disciplinary or an administrative (non-disciplinary) measure against a staff member, who failed to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuance, or to observe the standards of conduct expected of an international civil servant.

55. The Tribunal considers that both disciplinary and non-disciplinary measures (including oral and written reprimands) have the scope of either sanctioning or imposing an administrative measure on a staff member for his or her failure to

comply with his or her obligations under the employment contract with the Organization or to observe the standards of conduct required of an international civil servant.

56. In the letter issued on 17 January 2017 by the then ASG/OHRM, she concluded that the Applicant had put Mr. EA's MOP request on hold with no reasonable justification or factual basis, and that her actions exhibited shortcomings in communication skills in the context of solving a problem, since the Applicant's concerns about the MOP could have been adequately addressed at the time through a constructive and open discussion, which created to Mr. EA the feeling that he had been harassed. As a result, the then ASG/OHRM decided to issue the Applicant a letter of reprimand, indicating that a letter of reprimand is an administrative measure and that it would be placed in her official status file. She also required the Applicant to undertake an on-site training course with a focus on communication and problem-solving skills.

57. Having reviewed the evidence in the case, the Tribunal notes that, at the time of the events (January 2014), the Applicant was the CMS in UNAMI during the period from February 2013 to February 2015, and according to her letter of delegation of authority of 10 April 2013 and, in this capacity, she was responsible for certifying proposed obligations or expenditures on services, facilities, supplies and equipment, as well as those pertaining to personnel. Such certifications were to be, *inter alia*, a) in accord with the Financial Regulations and Rules and related instructions of the United Nations; b) in accord with the purpose(s) for which the relevant appropriation(s) and staffing table(s) were approved and the corresponding allotment(s) made; and c) were reasonable and in accord with the principles of efficiency and effectiveness.

58. The then CoS was Mr. MR. The Tribunal notes that as mentioned by the e-Guide to the DPKO and DFS, the CMS is the most senior official within the mission who is authorized to expend the United Nations funds associated with the mission's allocated budget, and his or her work is generally supported by the Chief of

Administrative Services and the Chief Integrated Support Services. The then CoS, Mr. MR, was the one who decided to withdraw the first MOP that he signed, due to the necessity to obtain further clarifications.

59. During the hearing, the Applicant described her functions as CMS as "similar to a function of Chief Administrator" and "[her] significant responsibility … was to ensure that the rules and regulations and established instructions of the [United Nations] were adhered to or complied with". Pursuant to sec. 3.2 of ST/AI/2013/3, "[p]rior to authorizing any official travel, the primary consideration should be whether direct face-to-face contact is necessary for mandate implementation. If not, then alternative methods should be employed" and "programme managers are required to certify on form TTS.5 that alternative methods such as video-conference, audio conference or other remote business practices, such as online meetings, *have been carefully reviewed*, were found not to be effective, and that travel is therefore necessary" (emphasis added). Moreover, according to sec. C.3.5 (Entry conference) of the Audit Manual:

> The AIC should coordinate the time and place for the entry conference meeting. The entry conference should be held prior to any travel to the audited entity's location. Therefore, for audits located in the field, the AIC should schedule the entry conference with key head office personnel and link relevant field office personnel by video or tele-conference facilities where feasible. This is to ensure that pertinent issues facing the audited entity are identified at the appropriate level and the audit is focused on the areas of greatest relevance and risk. It also enables the field office to be better prepared for the audit before the arrival of the audit team.

60. The Applicant testified that she was responsible for certifying that the proposed obligations and expenditures on services, facilities, supplies and equipment, as well as those pertaining to personnel, were reasonable and accorded with the principles of efficiency and effectiveness and that, in her understanding, it was her obligation to ensure that any proposed travel or any expenditure would be utilized in the best possible way for the Organization, the way that is efficient and effective. The Applicant also testified that that she had the responsibility to keep clear records to

justify any actions she took, as clearly stated in item a) of the letter of delegation of authority of 10 April 2013, which reads that "any proposed expenditures must accord with the Financial Regulation[s and] Rules and related instructions" and that, in the present case, a related instruction would be the administrative instruction on travel. She further testified that she used this body of information to justify whether she was going to grant the first MOP request and its corresponding cost. During her testimony, the Applicant explained the difference between a pre-analytical visit (or "pre-plan and visit") and an entry conference. She stated that the previous audits (about seven of them) that the IAD/OIOS team had conducted in UNAMI had always had an entry conference prior to the beginning of the audit itself. She explained that entry conferences had consistently been conducted via VTC since the audit team was based in Kuwait and not in Baghdad. She stated that, in the present case, it was the first time Mr. EA, who had been part of the IAD/OIOS previous audits in UNAMI, had "tried to do something that he termed a 'pre-plan and visit' prior to an entry conference". She added that she was familiar with the IAD/OIOS Audit Manual and that, in her opinion, if this "pre-plan and visit" had been standard practice, it would have been mentioned in the notification letter. For these reasons she was not convinced that this visit was standard practice and that is why she asked Mr. EA for further clarification.

61. The Applicant explained in detail that, in accordance with her prior experience, the first step that had to be followed in conducting audits was the issuance of an audit notification letter, which outlines the steps that are planned, to ensure that the mission (UNAMI in the present case) is aware of an upcoming audit and its subject matter, and to enable the mission to start preparing its own planning to assist the auditors. The second step is conducting an entry conference during which the auditors and the parties to be audited discuss about the content of the upcoming audit, and the third step would usually be the audit field work, based on the dates the auditors have identified and on the locations the auditors and the audited party have agreed on.

62. The Applicant indicated that the notification letter did not mention an auditor's visit to Baghdad prior to the entry conference, that she was surprised to receive an MOP/travel request since no entry conference had yet taken place as had been the practice in previous audits, and that she was thus not expecting to see an auditor travel to Baghdad at that time.

63. The Applicant further explained that, as the certifying officer in UNAMI who had the responsibility for ensuring that the funds related to the audit were spent in accordance with the United Nations established procedures, she had difficulty understanding how she would be able to justify the travel that was not outlined in the audit notification manual. She then mentioned that Mr. EA submitted a second MOP request after Ms. EB, IAD/OIOS Director, had intervened and attested that Mr. EA's planned visit was necessary. The Applicant stated that she had explained to Ms. EB that she would have difficulty approving the MOP request as Mr. EA's visit was not included in the audit notification letter, and suggested that Ms. EB in the future include such visits in an audit notification letter for the sake of transparency and for the records. The Applicant added that Ms. EB had agreed to add such information in future notification letters and that the Applicant had written a formal memorandum to Ms. EB for the record, copying the SRSG and the USG/DFS, reflecting these exchanges. Mr. EA subsequently submitted the second MOP, indicating that, in his view, the VTC was also not a suitable tool for the purpose of the pre-audit visit and that his presence in person at UNAMI was necessary prior to the entry conference.

64. As results from the Respondent's reply, after an exchange of correspondence with the Applicant between 15 and 19 January 2014, Mr. EA submitted the first MOP request to travel to Baghdad on 19 January 2014 for the period of 21 January 2014 (the date of departure from Kuwait to Baghdad) until 2 February 2014 (the date of return from Baghdad to Kuwait).

65. The Applicant informed the then CoS, Mr. MR, about her views that there was a need to clarify whether it is standard practice for a visit to take place prior to the entry conference and about the necessity to obtain such further clarifications.

Mr. MR then decided in his capacity as CoS, based on his own evaluation of the particular circumstances of the situation, to withdraw his signature from the first MOP on 20 January 2014, which he had previously signed on the same day, in order to obtain further clarifications vis-à-vis the alternative resources available within UNAMI, namely VTC.

66. The Respondent indicated in his reply that, during a telephone call on 20 January 2014, Ms. EB explained the audit process for the Applicant to understand the travel request made by Mr. EA and that, following this conversation, Ms. EB stated that the Applicant had a different understanding of audit fieldwork. The Applicant informed Ms. EB during their conversation that, in her view, Mr. EA did not follow the audit steps mentioned in the notification letter and that the notification letter would need to be amended. After the telephone call, Ms. EB advised Mr. EA to file a new MOP clarifying that the audit in question could not be achieved via video-teleconference. In the second MOP request submitted on 23 January 2014 for the period 28 January-9 February 2014, Mr. EA expressly indicated that the VTC was also not a suitable tool to accomplish the purpose of the pre-audit visit, confirming that his presence in person at UNAMI was necessary prior to the entry conference.

67. The Tribunal is of the view that the Applicant's actions were reasonable and in accordance with her obligation to carefully verify the cost of administrative services, procurement and logistical support, since all the costs were supported by UNAMI, in order to ensure that all the provisions of the OIOS Audit Manual were respected.

68. The first MOP submitted on 19 January 2014 indicated that the video conference and audio conference and other remote business practices have been carefully reviewed by Mr. EA, who considered that they were not effective for the objective of his travel to UNAMI. Based on the fact that all the previous entry conferences conducted between the IAD/OIOS auditors and UNAMI via VTC, the Applicant was of the view that it might be used successfully as an alternative method to the direct face-to-face contact, as proposed in the first MOP request, while Mr. EA

had a different opinion which was clarified in the second MOP by his express certification that the purpose of his trip could not be accomplished by VTC.

69. As results from the above, the Applicant and Mr. EA had different views about the audit field work and the use of existing video and/or audio conference facilities in UNAMI as an alternative tool to a face-to-face meeting, which appears to result from the specificity of the language used in this regard. The first MOP made reference to video conference and audio conference and online meetings, and the Applicant wanted to make sure that the available video teleconference facilities (VTC) in UNAMI, which provide a high-quality accuracy of conference between participants in different locations, and which was successfully used before, were also taken into consideration before the approval of Mr. EA's travel to Baghdad. Ms. EB advised Mr. EA to submit the second MOP and to clarify the aspect related to VTC, which he did.

70. Mr. EA testified that "[he] could have technically gone on the following day, … but [he] delayed it by a week because … there were only three flights between Kuwait and Baghdad in a week. … [He] adjusted the arrival and the departure time dates by a week" in order to "make it more efficient". It results from Mr. EA's testimony that he decided to change the initial dates of travel and that his work was not delayed even if he travelled a week later, an aspect which did not affect the period of the audit nor the result of the audit. Immediately after the issuance of the second MOP, UNAMI approved it and ensured all the necessary means for Mr. EA to conduct his visit to Baghdad.

71. Therefore, the Tribunal considers that there was no concrete negative result on the planned audit resulting from the annulment of the first MOP and that the Applicant's actions, which she was taking in her capacity as CMS in UNAMI, consisting in a careful review of the alternative means to a face-to-face visit which could have resulted in a lower level of the costs, appear to have been conducted within the margins of her role and responsibilities. There is no convincing evidence

that the Applicant exceeded her competence and that she acted without a reason with the sole objective to delay the audit visit.

72. Mr. EA testified that, if he was to maintain the initial travel dates, he could have travelled on the next day after the discussions which took place on 20 January, namely on 21 January—the initial day for departure to Baghdad indicated in the first MOP. However, for efficiency purposes, Mr. EA decided to change the dates of his travel and submitted the second MOP with a modified travel schedule on 23 January 2014 which was approved on 26 January 2014.

73. The Tribunal further considers that the Applicant acted within the limit of her responsibility while asking for clarifications from Mr. EA regarding the first MOP request and informing the then CoS, Mr. MR, about her concerns and/or the possibility to use alternative means, like VTC facilities. Even though the first MOP was withdrawn by the then CoS on 20 January 2014, all the aspects were clarified on the same day and Mr. EA, as advised by his supervisor, Ms. EB, submitted the second MOP for approval on 23 January 2014. The travel dates were changed by Mr. EA himself and there was no delay of his travel to UNAMI resulting from the Applicant's actions.

74. The Tribunal underlines that, pursuant to sec. 1.2 of ST/SGB/2008/5, "disagreement on work performance or on other work-related issues is normally not considered harassment and is not dealt with under the provisions of this policy but in the context of performance management", and is of the view that, in order to prevent future similar cases, staff members must be reminded that any such disagreement should not be perceived as harassment and that they are expected to collaborate and to clarify in a respectful and accurate manner, if needed, all the aspects related to their work.

75. In light of the above considerations, the Tribunal concludes that the appeal is to be granted and the contested administrative measure of written reprimand, which is considered as not being justified, since the Applicant did not withhold or delay

Mr. EA's travel to UNAMI, is to be rescinded. The additional administrative measure to send the Applicant to undertake an on-site training course with a focus on communication and problem-solving skills, which was not contested by the Applicant, is considered to be appropriate and sufficient to improve her professional communications skills.

Relief

76. The Applicant requested the following relief:

> "that the decision dated 17 January 2017 to impose a written reprimand be rescinded".

77. The Tribunal notes that the Applicant did not request as part of the relief that the Administration's additional administrative measure consisting for her to undertake an on-site training course with a focus on communication and problem-solving skills be rescinded. Therefore, the Tribunal will maintain this administrative measure.

78. Taking into consideration that the contested decision is not a decision related to an appointment, promotion or termination, no alternative compensation to the rescission of the contested decision is to be established pursuant to art. 10.5(a) of the Dispute Tribunal's Statute.

79. The Tribunal also notes that the Applicant did not request any compensation for material or moral damages.

Conclusion

80. In light of the foregoing, the Tribunal DECIDES:

a) The application is granted. The contested decision, namely the administrative measure consisting in a letter of written reprimand against the Applicant, is rescinded;

b) The letter of reprimand is to be removed in the Applicant's official status file;

c) The additional administrative measure for the Applicant to undertake an on-site training course with a focus on communication and problem-solving skills is maintained.

(Signed)

Judge Alessandra Greceanu

Dated this 4th day of September 2018

Entered in the Register on this 4th day of September 2018

(Signed)

Nerea Suero Fontecha, Registrar, New York