



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2018/112

Judgment No.: UNDT/2019/142

Date: 12 September 2019

Original: English

Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Bettina Gerber, UNOG

Cornelius Fischer, UNOG

Introduction

1. On 9 October 2018, the Applicant, a staff member of the Office of Internal Oversight Services (“OIOS”) in Vienna, filed an application contesting the decision to continue to involve the Deputy Director, Investigations Division (“ID”), OIOS, in supervisory and managerial roles vis-à-vis the Applicant.

Procedure before the Tribunal

2. On 12 November 2018, the Respondent filed his reply to the application.

3. By Order No. 5 (GVA/2019) dated 7 February 2019, the Tribunal decided to hold a case management discussion (“CMD”) and consolidated the present case with another case previously filed by the Applicant, for the purpose of holding a joint hearing, as they concern similar facts and contentions.

4. A CMD was held on 26 February 2019, to clarify the issues in contention as well as to agree on a way forward to achieve either alternative dispute resolution or a judicial determination on the merits.

5. On 15 March 2019, the Respondent filed additional documentary evidence to clarify the role of the Deputy Director, ID, OIOS, vis-à-vis the Applicant.

6. On 21 and 22 March 2019, the Tribunal held a hearing during which it heard evidence from six witnesses, including the Applicant.

7. At the hearing, the Tribunal requested the parties to indicate by 29 April 2019 if they would consider the option of an amicable resolution through mediation.

8. By separate emails dated 29 April 2019, the parties indicated their availability for mediation under the auspices of the United Nations Ombudsman and Mediation Services (“UNOMS”).

9. By Order No. 33 (GVA/2019) dated 2 May 2019, the Tribunal referred the present case to the Mediation Division, UNOMS. The proceedings were therefore suspended pending mediation until 12 June 2019.

10. On 12 June 2019, the parties filed a joint submission informing the Tribunal that the mediation was not successful and requesting that the proceedings in the present case be resumed before the Tribunal.

11. By email of 5 July 2019, Counsel for the Applicant informed the Tribunal that he was no longer representing the Applicant.

12. On 22 July 2019, the Applicant submitted a motion to file additional documents.

13. On 26 July 2019, the Applicant filed a motion requesting the Tribunal that “all public documents pertaining to the cases at hand wherein reference is made to any medical information or medical condition be redacted to censor such information”. In his motion, he also referred to other cases in which the Tribunal decided to anonymise its judgments in order to treat medical records of staff with strict confidentiality. The Tribunal will address this motion in its considerations below.

Facts

14. The Applicant joined the Organization on 18 May 2007 and currently serves as an Investigator at the P-3 level with OIOS at the United Nations Office in Vienna (“UNOV”).

15. On 18 March 2015, the Applicant filed a complaint pursuant to ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) against the Deputy Director, ID, OIOS, to the then Under-Secretary-General of OIOS (“USG/OIOS”).

16. An investigation was conducted into the Applicant’s complaint and, on 11 October 2016, the investigation panel issued its report.

17. By memorandum dated 19 April 2017, the USG/OIOS communicated to the Applicant the outcome of the investigation of his complaint against the Deputy Director, ID, OIOS. The Applicant was informed that “the investigation report indicated that there was a factual basis for [the Applicant’s] allegations, which

while not sufficient to justify the institution of disciplinary proceedings, warranted certain managerial actions”. In particular, it was noted that the Director, ID, OIOS, and the USG/OIOS, had provided counselling to the Deputy Director, ID, OIOS, with regard to his management style and team-building efforts.

18. By a separate application, the Applicant contested the outcome of the investigation into his complaint against the Deputy Director, ID, OIOS.

19. By email dated 10 July 2018, the Applicant requested the then USG/OIOS, that the Deputy Director, ID, OIOS be removed from any managerial responsibilities pertaining to investigation cases assigned to him. The Applicant claimed that despite the counselling provided to the Deputy Director, ID, OIOS, he had created a “toxic and hostile work environment” causing “harm” to him.

20. By email dated 11 July 2018, the Director, ID, OIOS rejected the Applicant’s request. He pointed out that the Deputy Director, ID, OIOS, was responsible for ensuring “quality outputs in terms of investigations and the associated reporting” and that he would not remove the later from his responsibility to review the Applicant’s work because that “would provoke anarchy, threaten the quality of [their] work and undermine the employer-employee relationship”. Nevertheless, the Director, ID, OIOS, proposed a vacancy to the Applicant at another duty station.

21. On 17 July 2018, the Applicant requested management evaluation of the 11 July 2018 decision.

22. By letter dated 22 August 2018, the Applicant was informed of the outcome of his request for management evaluation, namely that the Secretary-General had decided to uphold the contested decision.

23. On 9 October 2018, the Applicant filed the application referred to in para. 1 above.

Parties' submissions

24. The Applicant's principal contentions are:

- a. The Deputy Director, ID, OIOS, continues to micromanage the Applicant's daily work;
- b. Notwithstanding ongoing conflicts, the Administration failed to remove the Deputy Director, ID, OIOS, from the Applicant's reporting line;
- c. The Administration may not claim that the matter falls within its discretion and that no positive obligation exists to preclude the alleged offender from directly interfering with the Applicant's daily work;
- d. There is no apparent basis or justification for the *de facto* control assumed by the Deputy Director, ID, OIOS;
- e. The Deputy Director, ID, OIOS, is neither the Applicant's first reporting officer ("FRO") nor his second reporting officer ("SRO") or even an additional supervisor under ST/AI/2010/5 (Performance Management and Development System); therefore, his *de facto* supervision is *prima facie* unlawful;
- f. Involving three different officials in the management and performance assessment process places an undue burden on the Applicant, not least due to his limited ability to comply with multiple and often contradictory instructions regarding the same matter;
- g. After having filed a complaint under ST/SGB/2008/5 against the Deputy Director, ID, OIOS, the Applicant had been subject to retaliatory conduct throughout the investigation process and thereafter;
- h. The Administration has a positive obligation to ensure a safe and harmonious work environment that is free from discrimination, harassment and abuse. In view of the prevailing circumstances, the inclusion of the Deputy Director, ID, OIOS, in the Applicant's reporting line is inconsistent with this objective; and

i. The Applicant requests rescission of the contested decision and compensation for the harm suffered.

25. The Respondent's principal contentions are:

a. The application is not receivable as the Applicant does not contest an administrative decision. Indeed, the decision not to re-arrange the managerial role of the Deputy Director, ID, OIOS, vis-à-vis the Applicant does not create any legal consequences regarding his terms of employment;

b. The decision not to change the Organization's structure and workflows according to the Applicant's wish is lawful;

c. The Applicant provides no evidence that the decision on the management structure in the OIOS Office in Vienna is in any way arbitrary, taken in violation of mandatory procedures or based on improper motives or bad faith;

d. Under the applicable legal framework, there is no recognized right by a staff member to choose his or her own reporting lines. The Applicant's attempt to invoke a right from ST/AI/2010/5 to have no managerial interaction with the Deputy Director, ID, OIOS is far-fetched;

e. The fact that a manager does not serve as a staff member's FRO or SRO does not prohibit said manager from involvement in the staff member's outputs, particularly where the manager falls within the staff member's same line of supervision in the same office;

f. The fact that an investigation was conducted in accordance with ST/SGB/2008/5 does not provide a right to the Applicant to be removed from the authority of the Deputy Director, ID, OIOS;

g. Regarding the claim of retaliation, the Applicant has a right to raise his concerns properly and within the process set out in ST/SGB/2017/2 (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations);

- h. The Deputy Director, ID, OIOS, is not the Applicant's FRO or SRO. However, he is the FRO and/or SRO of the Applicant's managers and ultimately responsible for the quality of the output produced by the office, including the Applicant's work;
- i. It is not in the interest of the Organization to remove from the workflow the element of quality control implemented as a review by the Deputy Director, ID, OIOS. It is also not in the interest of the Organization to have the Applicant's work reviewed by a manager at another duty station, where an interaction in person would be excluded due to distance; and
- j. The Respondent requests the Tribunal to reject the application in its entirety.

Consideration

Motion to file additional evidence

26. In his 22 July 2019 motion, the Applicant claims that his counsel failed in his duty to act in his best interest and to submit relevant documents to the Tribunal. The Applicant states that he only became aware of the missing filings after he was granted access to his case file in the Tribunal's electronic case filing system.

27. The Tribunal notes that in the course of the proceedings, the parties had the opportunity to file relevant evidence, to participate at the hearing and to make closing submissions. The proceedings are currently closed, and the Tribunal finds that the Applicant did not provide any compelling reason warranting reopening the debates when a judgment was about to be delivered. The Applicant merely filed several emails between himself and his counsel. He did not identify any evidence that would be determinative for the disposal of the case. Any additional evidence or submissions at this stage would unduly delay the disposal of the case. As a consequence, the Applicant's motion is rejected.

Motion on redaction of judgment

28. The Applicant filed his 26 July 2019 motion on redaction of medical information only under the case before this Tribunal referred to in para. 18 above.

Given the scope of the motion, namely that it also referred to the case at hand, the Tribunal will address it. While there is no medical information referred in the present judgment, to preserve the anonymity of the Applicant, the Tribunal decides to anonymize this judgment.

On the merits of the application

29. The Tribunal has carefully reviewed the parties' submissions as well as the evidence on file and produced at the hearing. It has, consequently, identified the following legal issues:

- a. Whether the application is receivable;
- b. Whether the decision taken by the Director, ID, OIOS not to change the Applicant's reporting lines is lawful?
- c. Whether the Applicant is entitled to be compensated for the harm suffered?

Is the application receivable?

30. The Respondent contends that the application is not receivable since the Applicant does not contest an administrative decision according to art. 2.1(a) of the UNDT Statute, which reads:

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[.]

31. The Tribunal recalls the guiding principle held in the former United Nations Administrative Tribunal Judgment No. 1157, *Andronov* (2003), according to which, to be appealable, an administrative decision must have been unilaterally taken by the Administration, it must be of an individual application and must carry direct

legal consequences for the terms of employment of a particular staff member. This principle has been constantly reaffirmed by the Appeals Tribunal in its jurisprudence (see *Andati-Amwayi* 2010-UNAT-058, *Hamad* 2012-UNAT-269, *Gehr* 2014-UNAT-475, *Lee* 2014-UNAT-481, and *Reid* 2015-UNAT-563).

32. The Tribunal is of the view that the contested decision, *i.e.*, the decision taken by the Director, ID, OIOS, not to rearrange the reporting lines *vis-à-vis* the Applicant is an administrative decision.

33. In fact, reporting lines relate directly to the core of the employee-employer relationship and it has an impact not only on the daily functions that the staff member performs but also, on its evaluation and future career prospects.

34. Moreover, the Organization has a complex normative framework for performance management, namely ST/AI/2010/5 that has, as indicated above, a significant impact on the career prospects of its staff members and form part of a wider legal framework that regulates their status within the Organization as a whole. Hierarchy and reporting lines are an essential part of said normative framework and impact directly the staff member's terms of employment.

35. The Tribunal is of the view that reporting lines constitute a core element of the relationship between staff members and the Organization. Therefore, decisions taken in relation to it, have an obvious impact in his or her daily performance and conditions of service.

36. Consequently, the Tribunal finds that the requirements defined in *Andronov* concerning administrative decisions are met in this case, *i.e.*, the decision taken by the Director, ID, OIOS, not to change the reporting lines in relation to the Applicant was unilaterally taken by the Administration, it relates solely to this individual and impact his terms of employment.

37. For said reasons, the Tribunal finds the application receivable *ratione materiae*.

Is the decision taken by the Director, ID, OIOS, not to change the Applicant's reporting lines lawful?

OIOS specific mandate

38. In the present case, the Applicant is contesting the 11 July 2018 decision taken by the Director, ID, OIOS, not to remove the Deputy Director, ID, OIOS, from his reporting lines following his complaint for harassment against the latter.

39. The Applicant refuses to accept the involvement of the Deputy Director, ID, OIOS, in his daily work. In particular, he claims that the Deputy Director, ID, OIOS, is not formally assigned as an additional supervisor in terms of section 5.2 of ST/AI/2010/5 and that, as a consequence, his *de facto* supervision is unlawful.

40. The Respondent argues, instead, that the Applicant cannot request a change in their reporting lines since it would be disruptive for the workflow and the quality output of OIOS. Moreover, the fact that a manager does not serve as a staff member's FRO or SRO does not prohibit the manager from involvement in the staff member's outputs, particularly where the manager falls within the staff member's same line of supervision.

41. To rule on this issue, the Tribunal needs to consider the institutional structure of OIOS and how the reporting lines were designed. It also needs to take into consideration, not only the staff members rights and the Organization's duty of care in relation to its employees but also the overall interest of the Organization.

42. To that effect, the Tribunal will consider the content of ST/AI/2010/5 and ST/SGB/2008/5, reading them in conjunction with the applicable provisions of the Charter of the United Nations, of the Staff Regulations and Rules of the United Nations and the institutional framework of OIOS.

Reporting lines in OIOS

43. Art. 97 of the Charter of the United Nations provides as follows:

The Secretariat shall comprise a Secretary-General and such staff as the Organization may require. [...]. He shall be the chief administrative officer of the Organization.

44. Staff Regulation 1.2(c) provides in its relevant part that:

Staff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations.

45. The Secretary-General is the ultimate responsible for the well-functioning of the administrative *apparatus* of the Organization and is at the top level of the hierarchical chain in the United Nations system.

46. Since the United Nations is a complex Organization with a multiple set of functions and responsibilities, its competences were allocated to different agencies, organs and institutions with specific mandates.

47. In this context, OIOS—established by the General Assembly in its resolution 48/218 B of 29 July 1994—plays an essential role assisting the Secretary-General in fulfilling his internal oversight responsibilities on resources and staff of the Organization.

48. According to ST/SGB/2002/7 (Organization of the Office of Internal Oversight Services), OIOS' organizational structure includes an Internal Audit Division, a Monitoring, Evaluation and Consulting Division and an Investigations Division.

49. In the present case, the Tribunal will only focus on the role and the organizational structure of the Investigations Division, since the Applicant is an investigator working for it in Vienna.

50. As per section 7.2 of ST/SGB/2002/7, the Investigations Division has *inter alia* the following core functions:

(a) Receiving and investigating reports of violations of United Nations regulations, rules and pertinent administrative issuances and transmitting to the Secretary-General the results of such investigations, together with appropriate recommendations to guide the Secretary-General in deciding on jurisdictional or disciplinary action to be taken[.]

51. According to section 7.1 of ST/SGB/2002/7, the Investigations Division is headed by a Director who is accountable to the USG/OIOS. Similarly, the Deputy Director, ID, OIOS, in Vienna is accountable to the Director, ID, OIOS, who was the decision-maker in the present case.

52. Consequently, OIOS' institutional framework comprises a vertical hierarchy with different layers and reporting lines that starts, at the professional level, with the Applicant as an investigator, followed by his FRO, his SRO, the Deputy Director and the Director, ID, OIOS, with the latter reporting to the USG/OIOS. The USG/OIOS is in turn accountable to the Secretary-General.

53. The institutional framework of OIOS clearly shows that the reporting lines correspond to a hierarchical chain that goes from the top to the bottom.

54. In the present case, the evidence shows that the Applicant is supervised by Mr. A. M. who is his FRO and Ms. M. G. who is his SRO. The Deputy Director, ID, OIOS, serves as Ms. M. G.'s FRO and Mr. A. M.'s SRO and works under the supervision of the Director, ID, OIOS, located in New York.

55. According to section 5.1 of ST/AI/2010/5, the FRO is responsible for:

- (a) Developing the workplan with the staff member;
- (b) Conducting the midpoint review and final evaluation;
- (c) Providing ongoing feedback on the overall work of the staff member throughout the performance cycle;
- (d) Advising, supporting and coaching the staff member on professional development and in the development of a personal development plan;

(e) Developing a performance improvement plan in consultation with the staff member in the case of performance shortcomings or underperformance, if applicable;

(f) Ensuring that all e-PAS and/or e-performance documents of staff supervised are completed in accordance with the prescribed procedures.

56. Pursuant to section 5.3 of ST/AI/2010/5, the SRO, who shall be the FRO's supervisor or equivalent, is responsible for:

(a) Ensuring that the [FRO] understands and applies the Performance Management and Development System principles and procedures;

(b) Holding the [FRO] accountable for developing, together with staff, workplans with fair and consistent performance expectations and ensuring linkages between department/office priorities and individual workplans;

(c) Holding the [FRO] accountable for the timely appraisal of the staff member's performance;

(d) Providing ongoing feedback and evaluating the [FRO]'s ability to manage the performance of his/her supervisees;

(e) Resolving disagreements between the staff member and the [FRO] in the implementation of the Performance Management and Development System;

(f) Overseeing the establishment and implementation of a performance improvement plan in case of performance shortcomings or underperformance, as provided for in section 10 of [ST/AI/2010/5].

57. The Tribunal recalls the arguments raised by the Applicant to object to the intervention of the Deputy Director, ID, OIOS, in his work, namely that the Deputy Director, ID, OIOS, is neither his FRO nor SRO or even an additional supervisor under ST/AI/2010/5 and that, therefore, his *de facto* supervision is *prima facie* unlawful.

58. The Tribunals notes that the job description of the Deputy Director, ID, OIOS, that the Respondent submitted as evidence in preparation for the hearing on the merits, includes, *inter alia*, the following responsibilities:

3) Ensuring that investigations are carried out in a timely fashion and coordinated within the work of the Service and with other organizations of the United Nations system, as appropriate;

4) Leading, supervising and carrying out investigations, especially on fraud and corruption, providing substantive reviews of the drafts prepared by others and, ensuring that reports are of a high quality and meet required standards[.]

59. Considering the above, the Tribunal finds that it is part of the responsibilities of the Deputy Director, ID, OIOS, to review investigation reports drafted by the Applicant. Indeed, the Deputy Director, ID, OIOS, has the overall responsibility to perform the “quality check” of the investigation reports to ensure that they comply with the required standards. This was clearly stated at the hearing, not only by the Deputy Director, ID, OIOS, but also by the Director, ID, OIOS.

60. Also at the hearing and when questioned about the reasons for not having changed the reporting lines in the present case, the Director, ID, OIOS, reiterated that to do so would provoke “anarchy” and that OIOS could not afford to lose its working standards. He also clarified that the Deputy Director, ID, OIOS, reviews reports drafted by other investigators, not only those drafted by the Applicant.

61. Furthermore, the Tribunal had the opportunity to hear the testimony of the Applicant’s SRO (Ms. M. G.). She testified that, in her view, there was a “personality conflict” between the Applicant and the Deputy Director, ID, OIOS, mainly because both are “strong minded”, “opinionated” and “very assertive”. She testified that the Deputy Director, ID, OIOS, has an “autocratic style” and that the Applicant is constantly questioning the decisions of the Deputy Director, ID, OIOS.

62. She referred to an occasion in which the Applicant had to go on mission to Kabul and he refused to travel there.

63. Ms. M. G.’s testimony was clear and convincing, and it was also supported by documentary evidence on file. Indeed, in an email sent by Ms. M. G. to the Applicant on 25 April 2018, she *inter alia* wrote the following:

For the last time, you are not being ordered, I object to the use of the term. You are being asked to do your work as an investigator - to establish the facts being reported. We have been through this several times and I am not going to keep discussing it further as there seems to be no useful outcome.

64. In her testimony, Ms. M. G. also explained the difficult situation that the OIOS Vienna Office faced when the Deputy Director, ID, OIOS, joined the team due to a restructuring plan that needed to be implemented.

65. Ms. M. G. further testified that the Deputy Director, ID, OIOS, had the intention to streamline the work and to increase the productivity and the quality of the investigation reports. This explains why he wanted to get directly involved in the process of reviewing the reports prepared by the investigators before their submission to the New York Office of OIOS.

66. Bearing in mind the witnesses' testimonies and the evidence produced at the hearing, the Tribunal is of the view that the problems affecting the OIOS Vienna Office cannot be solely attributed to the management style of the Deputy Director, ID, OIOS. On the contrary, the Applicant has also his share of responsibility in the difficult working environment in the OIOS Vienna Office.

67. For instance, the Tribunal notes that in an email sent to the Applicant on 17 March 2018, his FRO, Mr. A. M., who also provided testimony at the hearing, *inter alia* wrote the following:

I have now reviewed your work-plan.

Firstly, notwithstanding the new matter [Redaction in the document] your comments in the work-plan seemingly contradict what the Deputy Director and Director have stated.

You have suggested that the issues reported may not warrant investigation. While I always listen to your opinion, on this occasion, I have to agree with the case management that a full investigation is undertaken.

68. In fact, it appears that the difficult situation at the OIOS Vienna Office arose from a clash of two personalities. On the one hand, a senior manager who wanted to get the most out of his staff and, on the other hand, an experienced investigator

who was used to work with more autonomy and refused to accept feedback on his work, which he considered as unnecessary criticism.

Discretion of the Organization

69. The Tribunal will analyse the Administration's discretion in relation to reporting lines.

70. ST/SGB/2008/5 and ST/AI/2010/5 need to be read together. The Tribunal will provide some guidance on how these two legal instruments should be interpreted and reconciled, if needed.

71. From the point of view of the hierarchy of norms, ST/SGB/2008/5 is at a higher level than ST/AI/2010/5. According to section 5.3 of ST/SGB/2008/5, the Organization has the duty to take prompt and concrete action in response to reports and allegations of prohibited conduct.

72. The duty of care and the obligation to take concrete action may, indeed, justify, in particular cases, a change in the reporting lines. However, changing reporting lines should be a last resort option due to its potential disruptive impact on an office's workflow and a staff member's performance management.

73. The Applicant claims that the Deputy Director, ID, OIOS, should be removed from his reporting line because of the Applicant's complaint against him under ST/SGB/2008/5.

74. Since in the present case the Tribunal is not seized of the outcome of the Applicant's complaint against the Deputy Director, ID, OIOS, under ST/SGB/2008/5, the Tribunal will not discuss whether the Applicant was, effectively, a victim of a prohibited conduct.

75. However, the Tribunal will consider whether the Applicant could claim a change in his reporting lines based on his complaint against the Deputy Director, ID, OIOS.

76. It is within the discretion of the Administration to consider what the available options are when examining a complaint of prohibited conduct and to make a

decision about it, taking into account the “duty of care” towards staff members and the interests of the Organization.

77. For instance, the Organization may opt to take disciplinary actions or managerial action. The latter can involve *inter alia* mediation, team-building exercises and coaching managers and/or staff members based on a “case-by-case” evaluation and the gravity of each situation, or, when an investigation took place (as in this case) according to the findings of the investigation.

78. Accordingly, the current legal framework leaves a certain margin of manoeuvre for the Organization to act without disrupting an office’s workflow and the established hierarchical chain.

79. Concerning the discretion of the Secretary-General, the Appeals Tribunal held in *Sanwidi* 2010-UNAT-084 the following:

40. When judging the validity of the Secretary-General’s exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General.

80. The Tribunal notes that an investigation was conducted into the Applicant’s complaint and, on 11 October 2016, the investigation panel issued its report. The Applicant was informed of the outcome of the investigation by memorandum dated 19 April 2017. In particular, he was informed that based on the investigation report, “there was a factual basis for [his] allegations, which while not sufficient to justify the institution of disciplinary proceedings, warranted certain managerial actions”. In that respect, it was noted that the Director, ID, OIOS, and the USG/OIOS had provided counselling to the Deputy Director, ID; OIOS, with regard to his management style and team-building efforts.

81. The managerial actions taken by the Administration following the Applicant's complaint were made based on the findings of the investigation report and the Tribunal sees no reason to depart from them.

82. The Tribunal is of the view that the evidence provided by the witnesses' testimony at the hearing as well as the documentary evidence on file do not purport the Applicant's allegations of harassment and retaliation that may have led to a change in the reporting lines.

83. Instead, the Tribunal finds that this matter is rather a work-related conflict linked to the restructuring process of the OIOS Vienna Office, the managerial style of the Deputy Director, ID, OIOS, and the defensive attitude of the Applicant.

84. It is clear that the Deputy Director, ID, OIOS, has an important role in ensuring "quality in terms of investigations and the associated reporting" in the OIOS Vienna Office. On the issue of changing the reporting lines, the Appeals Tribunal has held that no staff member has the right to select his or her supervisors (see, *Rees* 2012-UNAT-266).

85. The Tribunal also finds that it was not demonstrated that the Deputy Director, ID, OIOS, treated the Applicant differently than other investigators. In fact, the evidence rather shows that he reviews reports drafted by other investigators in the OIOS Vienna Office to ensure that the final reports are of a high quality.

86. The testimony of Ms. M. G. was clear in respect of the "different management styles" of the former Deputy Director, ID, OIOS, and the current one. In fact, she testified about the managerial style of the current Deputy Director, ID, OIOS, and pointed out that it contrasted with the managerial style of the former Deputy Director. In her view, this difference in management style and the issues related to the restructuring exercise had a major impact on the OIOS Vienna Office team and stressed the members of the team when the current Deputy Director, ID, OIOS, joined the OIOS Vienna Office.

87. Under the factual circumstances of the case and the applicable legal framework, the Tribunal finds that the contested decision not to change the

Applicant's reporting lines was a proper exercise of administrative discretion and, consequently, it was lawful.

Is the Applicant entitled to any compensation?

88. Having found that the contested decision is lawful, the Applicant is not entitled to any compensation.

Conclusion

89. In view of the foregoing, the Tribunal **DECIDES**:

To reject the application in its entirety.

(Signed)

Judge Teresa Bravo

Dated this 12th day of September 2019

Entered in the Register on this 12th day of September 2019

(Signed)

René M. Vargas M., Registrar, Geneva