



Before: Judge Alexander W. Hunter, Jr.

Registry: Geneva

Registrar: René M. Vargas M.

RABBAT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Omar Yousef Shehabi, OSLA

Counsel for Respondent:

Jérôme Blanchard, LPAS/UNOG

Introduction

1. By application filed on 24 May 2021, the Applicant, a staff member of the United Nations Office on Drugs and Crime (“UNODC”), contests the alleged Administration’s failure to take appropriate measures to promote a harmonious work environment and protect him from prohibited conduct.

Facts and procedural history

2. The Applicant joined the United Nations in September 2008 and holds a permanent appointment. Since July 2014, he has served as Chief, Convention Evaluation Section (“CES”) of the Secretariat of the International Narcotics Control Board (“SINCB”) in the Division for Treaty Affairs (“DTA”) of UNODC.

3. The CES consisted of a Chief of Section (P-4), two Drug Control Officers (P-3), and a Team Assistant (GS-5). Mr. M. encumbers one of the Drug Control Officer posts. The Applicant had served as Mr. M.’s First Reporting Officer (“FRO”) since becoming CES Chief in 2014.

4. In October 2015, Mr. F., the then-Secretary of the SINCB who was Mr. M.’s Second Reporting Officer (“SRO”), and the Applicant, issued a verbal warning which was later confirmed in writing, regarding his “insubordination, conduct towards his line management and style of communication”.

5. On 17 April 2018, the Applicant went to Mr. M.’s office to discuss Mr. M.’s repeated refusal to comply with his instructions to get his clearance before submitting his work outside of CES. According to the Applicant, Mr. M. screamed at him, asked whether the Applicant was threatening him, and ordered him to leave his office.

6. On 25 May 2018, Mr. F. and the Applicant reported to the Human Resources Management Service (“HRMS”) of UNODC the allegations of insubordination, disrespectful and belligerent behaviour by Mr. M. including the 17 April 2018 incident.

7. On 10 September 2018, the Director, Division for Management (“DM”) notified Mr. M. of his intent to issue him a written reprimand and invited him to provide his comments pursuant to staff rule 10.2 (b)(i) by 24 September 2018.

8. On 21 September 2018, Mr. M. requested an extension of time to respond and provided his comments on 1 October 2018. HRMS then requested further input from Mr. M., who submitted additional comments on 26 April 2019. In these comments, Mr. M. alleged that the Applicant had used highly inappropriate and discriminatory language regarding Mr. M.’s national origin and age.

9. In view of the counter allegations raised by Mr. M., on 4 July 2019, HRMS requested comments from the Applicant and Mr. F.

10. On 5 July 2019, the Applicant partly responded to Mr. M.’s counter allegations, rejecting all allegations raised by Mr. M., and requested additional time to file his comments. The Applicant also requested “immediate and permanent” discontinuation of the reporting line through the reassignment of one of the parties to different functions in another administrative unit.” While the Applicant did not file a formal complaint, he referred to sec. 2.2 of the former ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority). The Applicant also expressed his view that Mr. M.’s possible temporary reassignment would not be sufficient to address the situation.

11. Effective 17 July 2019, Mr. M. was selected for a temporary position within the Precursors Control Section (“PCS”) in SINCB/DTA/UNODC, and he was subsequently laterally moved. This resulted in the discontinuation of reporting lines between Mr. M. and the Applicant as his FRO. Mr. M. has not returned under the supervision of the Applicant since, and after several extensions, this arrangement was valid until December 2021.

12. On 24 July 2019, the Applicant expressed his wish to be laterally transferred. On 29 July 2019, HRMS responded to the Applicant recalling that Mr. M. had been moved to a new position and was no longer in a direct reporting line to the Applicant. HRMS further informed the Applicant that there was no provision which enabled the Administration to enforce immediate or permanent placement of either Mr. M. or the Applicant on the basis of concerns expressed over possible future inappropriate conduct on the part of Mr. M. while he was serving in another section. The Applicant responded to HRMS and again requested to be reassigned, considering that “permanent reassignment of one of the parties [was] indispensable” to ensure that he would be protected from “continued and totally unwarranted serious allegations of misconduct”.

13. On 1 August 2019, Mr. F. responded to the allegations raised by Mr. M.

14. In September and October 2019, the Applicant contacted HRMS on various occasions to inquire about the measures the Organization was taking to address the matter.

15. On 30 October 2019, a meeting was held between HRMS and the Applicant to discuss the matter as well as the protective measures which the Applicant was seeking. In the meeting, HRMS explored the possibility to resolve the matter between the Applicant and Mr. M. through informal means. Following this meeting, the Applicant was also reminded to provide his comments which had been sought in July 2019. The Applicant then confirmed that he entirely endorsed Mr. F.’s submission of 1 August 2019.

16. On 11 November 2019, the Applicant informed HRMS about his willingness to explore informal resolution under certain conditions including, amongst other things, the withdrawal of the allegations made against him by Mr. M.

17. On 14 or 15 November 2019, the Administration issued Mr. M. a written reprimand in response to the report by the Applicant and Mr. F. of 25 May 2018.

18. On 2 December 2019, HRMS met with Mr. M. to discuss the allegation he made against the Applicant and the possibility of informal resolution of the matter.

19. On 6 February 2020, the Applicant notified HRMS about his decision to pursue the matter through official means since Mr. M. did not avail himself to resolve it through informal means.

20. On 13 February 2020, the Applicant filed a formal complaint against Mr. M. with the Office of Internal Oversight Services (“OIOS”), alleging that Mr. M. raised unfounded, malicious and highly prejudicial accusations of discrimination against him.

21. On 26 February 2020, OIOS referred the matter to UNODC for any appropriate action under ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority).

22. Starting on 16 March 2020, presence at the premises of the Vienna International Centre was restricted due to the COVID-19 pandemic and most staff worked remotely. Similar restrictions were implemented in UNODC field offices, taking effect during or after March 2020, putting considerable strain on HRMS and DM resources at the United Nations Office at Vienna (“UNOV”) and UNODC.

23. On 21 May 2020, the Applicant was informed that his report of prohibited conduct was under review and that there may be a delay due to unforeseen exigencies. The Applicant was also informed that the arrangement whereby Mr. M. was not reporting to him had been extended, and he was invited to elaborate on any expected additional interim measures for consideration by the head of entity and the responsible official.

24. On 22 May 2020, the Applicant responded that his “request for interim measures was related to the fact that [Mr. M.] was slated to return to my section as my direct report in April 2020. Though his temporary appointment has been extended, that was not known to me at the time I lodged the complaint.”

25. On 14 and 15 July 2020 respectively, the Applicant filed an additional complaint against Mr. M. with OIOS, reporting unsatisfactory conduct on Mr. M.'s part in knowingly misrepresenting his FRO for the 2018-2019 performance cycle as an official outside his reporting lines for the cycle under review, and in knowingly misrepresenting his performance assessment for work in a section which he was not part of at that time.

26. On 16 August 2020, OIOS referred the matter to UNODC pursuant to ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process). Unlike in the first complaint, no reference was made to ST/SGB/2019/8 for the new case.

27. HRMS noted that it would work with the Applicant's current and incoming management to seek a more permanent solution to the satisfaction of all parties concerned and with the aim of not having the alleged offender return under the Applicant's supervision.

28. On 2 September 2020, a fact-finding panel was appointed to investigate both complaints of the Applicant, and he was informed accordingly.

29. On 24 September 2020, a meeting took place with the Chief, HRMS, where he committed to continue to extend HRMS' full spectrum of support in identifying solutions, including exploring with Management an extension of some form of the interim arrangement, beyond the expiration of the arrangement in place. The Applicant merely expressed his discontent and requested that Mr. M. be placed on administrative leave with pay.

30. On 30 September 2020, the Applicant's Counsel informed HRMS about the decision to discontinue the dialogue with Management on finding interim or long-term measures that would be more agreeable to the Applicant.

31. By email dated 10 November 2020, HRMS provided the Applicant with an update on the ongoing investigation.

32. By email dated 20 November 2020, the Secretary ad interim, SINCB, UNODC informed the Applicant of his decision to implement a six-month temporary arrangement for Mr. M. with possible extension as an interim measure pending the investigation of the Applicant's complaint.

33. On 8 December 2020, the Applicant was informed that Mr. M. would not be reporting to the Applicant and would not return to the work unit for the next six months.

34. On 13 January 2021, the Applicant requested management evaluation of the following matters:

- a. Decision to approve an interim preventative measure that is not in compliance with the Administration's duty to ensure a harmonious work environment and protection from prohibited conduct;
- b. Continuing implementation of measures inadequate to ensure a harmonious work environment and protection from prohibited conduct; and
- c. Failure by the Responsible Official to comply with the prescribed timelines under ST/SGB/2019/8 for concluding a preliminary assessment of a report of prohibited conduct and constituting an investigative panel.

35. By letter dated 23 February 2021, the Management Evaluation Unit informed the Applicant of its finding that his request for management evaluation was not receivable.

36. On 7 April 2021, the Applicant was informed that the investigation was still ongoing.

37. On 24 May 2021, the Applicant filed the present application mentioned in para. 1 above.

38. On 25 May 2021, the application was served on the Respondent, who was instructed to file his reply by 24 June 2021.

39. On 4 June 2021, the Applicant was informed that the investigation had been completed and that the arrangement regarding the reassignment of Mr. M. had been extended until December 2021.

40. By motion of 23 June 2021 and motion of 21 July 2021, the Respondent requested two extensions of time to file his reply, which were granted by the Tribunal on 24 June and 21 July 2021, respectively.

41. On 4 August 2021, the Respondent filed his reply with one annex filed on an *ex parte* basis, which is an Interoffice Memorandum from the Director, DM, UNODC to Mr. M. concerning a request for comments on reported unsatisfactory conduct.

42. By Memorandum dated 29 October 2021, the Director, DM informed the Applicant of the outcome of his two complaints, concluding that:

The evidence collected by the Panel did not establish sufficient evidence to pursue the claim of knowingly false or unfounded and malicious allegations. At the same time, the Panel established a pattern of insubordinate behavior on the part of [Mr. M.] also reflected in the events around the performance document for the 2018-2019 performance cycle.

In considering the Panel's findings, I concluded that [...] there was a factual basis indicating unsatisfactory conduct, however, and under the overall circumstances of the case, there was insufficient evidence to establish that such conduct could amount to potential misconduct.

43. The temporary reassignment of Mr. M. had been extended beyond the closure of the case, and effective 1 April 2022, Mr. M. was permanently moved, with his position, outside of the Applicant's supervision.

44. On 26 April 2022, the present case was assigned to the undersigned Judge.

45. By Order No. 59 (GVA/2022) of 23 May 2022, the Tribunal decided that the annex to the reply mentioned in para. 41 shall remain *ex parte*, instructed the Applicant to file his response to the Respondent's reply by 30 May 2022, and invited the Respondent to file his comments to the Applicant's above response by 6 June 2022.

46. On 30 May 2022, the Applicant filed a motion for extension of time to file his response pursuant to Order No. 59 (GVA/2022) until 2 June 2022.

47. On 31 May 2022, the Tribunal granted the Applicant's motion and accordingly extended the Respondent's deadline to file his comments on the Applicant's submission from 6 to 9 June 2022.

48. On 2 June 2022, the Applicant filed his response to the Respondent's reply pursuant to Order No. 59 (GVA/2022) together with a motion for order for joint statement of agreed and contested facts.

49. By Order No. 61 (GVA/2022), the Tribunal instructed the Respondent to file his comments on the Applicant's motion of 2 June 2022 by 9 June 2022.

50. On 9 June 2022, the Respondent filed his reply to Orders No. 59 and No. 61 (GVA/2022). In this connection, he requests the Tribunal to admit as evidence an Interoffice Memorandum titled "Closure of the matter in accordance [with] section 5.5 (i) (ii) of ST/SGB/2019/8, and section 7.5 (b) of ST/AI/2017/1".

Parties' submissions

51. The Applicant's principal contentions are:

- a. The Administration breached its duty of care towards the Applicant, specifically its obligation to take appropriate measures to promote a harmonious work environment and protect him from prohibited conduct of his supervisee, i.e., Mr. M.;

b. The Administration failed to establish a durable solution to protect the Applicant from Mr. M. Specifically, on three separate occasions in 2020, Mr. M. was due to imminently return under the Applicant's supervision which compounded the emotional distress that the Applicant incurred from years of exposure to Mr. M.'s unacceptable behaviour;

c. The temporary reassignment of Mr. M. to PCS was initiated by Mr. M. and the PCS section rather than SINCB management or UNOV Human Resources and, as such, the Administration cannot now claim credit for it;

d. Far from alacrity and efficiency, the Administration took 18 months from the report of prohibited conduct to issue the written reprimand. More pertinently, the Administration took over one year to determine Mr. M.'s defamatory allegations against the Applicant to be unsubstantiated—an unjustifiable delay which contravened its duty of care towards the Applicant;

e. By February 2020, the Administration had still failed to take any corrective action with respect to Mr. M.'s malicious allegations of age or national origin discrimination; and

f. The Administration failed to take appropriate measures in relation to Mr. M.'s demonstrated history of prohibited conduct towards the Applicant.

52. The Respondent's principal contentions are:

a. The application is not receivable because the Applicant has not identified any decision that produces any direct legal consequences affecting his rights;

b. The Administration took all appropriate measures and acted in accordance with its duty of care towards the Applicant;

c. The actions taken were lawful, and, at that stage, sufficient to protect the staff members involved and the work unit; and

d. The Administration acted promptly in addressing the underlying initial request by the Applicant in his capacity as Mr. M.'s supervisor when he asked for the Administration's intervention in 2018.

Consideration

Procedural issues

The Applicant's motion for joint statement of agreed and contested facts

53. The Applicant submits that a joint statement of agreed and contested facts is necessary for a fair and expeditious disposal of the case. In support of his claim, he argues that the Respondent "takes no position on the facts asserted in the application upon which [his] legal conclusions are based". He further puts forward that:

While virtually all of [the facts in question] are supported by documentary evidence annexed to the application, the respondent does not admit a single one. His reply thus constitutes a general denial. The UNDT has repeatedly criticised general denials for making it "impossible for the Tribunal to understand what the Respondent is actually contesting" and has observed that "the approach of the Respondent to purely challenge everything in the application is entirely unhelpful" (footnote omitted). The [Applicant] is thus called upon to address the [R]espondent's arguments on receivability and the merits without knowing which facts the [R]espondent admits and which he contests.

54. In response, the Respondent contends that while he disagrees with the manner in which the Applicant characterized the facts, the facts as detailed in his reply are sufficiently clear and documented.

55. Having reviewed the parties' submissions and the evidence on record, the Tribunal considers that it is fully informed on this matter and thus it is not necessary for the parties to file a joint statement of agreed and contested facts.

56. Accordingly, the Tribunal rejects the Applicant's motion in this respect.

The Respondent's request to adduce evidence

57. In his reply to Orders No. 59 and No. 61 (GVA/2022), the Respondent requests the Tribunal to admit as evidence an Interoffice Memorandum titled "Closure of the matter in accordance [with] section 5.5 (i) (ii) of ST/SGB/2019/8, and section 7.5 (b) of ST/AI/2017/1".

58. The Tribunal recalls that pursuant to art. 18.1 of its Rules of Procedure, it shall determine the admissibility of any evidence and, under art. 18.5, it may exclude evidence it considers irrelevant, frivolous or lacking probative value.

59. Having reviewed the document the Respondent seeks to include in the record, the Tribunal finds that it is relevant to the present case and thus does not fall under the exclusion scope of art. 18.5 of its Rules of Procedure.

60. Therefore, the Tribunal finds it appropriate to grant the Respondent's request. Accordingly, the document mentioned in para. 57 above is admitted into the record of the present case.

Scope of judicial review and the contested decision

61. In the present case, the Respondent argues that the Applicant did not identify any administrative decision subject to appeal.

62. The Tribunal recalls that it is trite law that the applicant must "identify an administrative decision capable of being reviewed" (see, e.g., *Haydar* 2018-UNAT-821, para. 13; *Farzin* 2019-UNAT-917, para. 36). Moreover, the Tribunal has "the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review", and "may consider the application as a whole, including the relief or remedies requested by the staff member, in determining the contested or impugned decisions to be reviewed" (see *Fasanella* 2017-UNAT-765, para. 20; *Cardwell* 2018-UNAT-876, para. 23).

63. The Tribunal notes that the Applicant described the contested decision as “measures to promote a harmonious work environment and protect personnel from prohibited conduct through preventive measures”. In identifying the contested decision, the Applicant referred, *inter alia*, to an email dated 20 November 2020 from the Secretary *ad interim*, SINCB, UNODC to him deciding to approve a six--month temporary arrangement for Mr. M. with possible extension as an interim measure pending the investigation of the Applicant’s complaint.

64. Furthermore, in the remedies section of the application, the Applicant indicates that he seeks damages for moral harm and emotional distress resulting from the Administration’s breach of its duty to ensure a harmonious work environment. To support his claim, the Applicant pointed to the evidence that the defamatory allegations of age and national origin discrimination is a particular and recurring source of his emotional distress and that Mr. M.’s scheduled return to his section and supervision on three occasions in 2020 caused ‘an unreasonable increase in the level of stress for the Applicant in each period preceding the expected return’.

65. Accordingly, the Tribunal considers that the Applicant seeks to contest the Administration’s failure to take appropriate measures to promote a harmonious work environment and protect him from prohibited conduct. As such, the Tribunal is of the view that the Applicant has met his obligation to identify the contested decision.

66. Having reviewed the parties’ submissions and the evidence on record, the Tribunal defines the issues to be examined in the present case as follows:

- a. Whether the application is receivable;
- b. Whether the Administration failed to take appropriate measures to promote a harmonious work environment and protect the Applicant from prohibited conduct; and
- c. Whether the Applicant is entitled to any remedies.

67. The Tribunal will address these issues in turn below.

Whether the application is receivable

68. The Respondent submits that the application is not receivable. Specifically, he argues that insofar as the application relates to the actions taken to address the apparent conflict between the Applicant and his supervisee, Mr. M., the Applicant has not identified any decision that produced any “direct legal consequences adversely affecting his terms and conditions of appointment”.

69. In this respect, the Tribunal recalls that art. 8.1(a) of its Statute provides that an application shall be receivable if “[t]he Dispute Tribunal is competent to hear and pass judgement on the application, pursuant to article 2 of the present statute”. Art. 2.1(a) of the Tribunal’s Statute provides in relevant part that:

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.

70. The Appeals Tribunal has consistently held that the key characteristic of an administrative decision subject to judicial review is that the decision must “produce direct legal consequences” affecting a staff member’s terms and conditions of appointment and the administrative decision must “have a direct impact on the terms of appointment or contract of employment of the individual staff member” (see, e.g., *Lee* 2014-UNAT-481, para. 49).

71. As previously found in para. 65, the Applicant seeks to contest the Administration’s failure to take appropriate measures to promote a harmonious work environment and protect him from prohibited conduct.

72. In this respect, the Tribunal notes that under sec. 2.2 of ST/SGB/2008/5 and sec. 3.2 (a) of ST/SGB/2019/8, the Organization has an obligation to take appropriate measures to promote a harmonious work environment and protect

personnel from prohibited conduct. There is no doubt that provisions of ST/SGB/2008/5 and ST/SGB/2019/8 fall within the scope of the “terms of appointment” under art. 2.1(a) of the Tribunal’s Statute. Thus, the Administration’s failure to take appropriate measures to promote a harmonious work environment and protect the Applicant from prohibited conduct indeed produces direct legal consequences affecting his terms and conditions of appointment.

73. Moreover, the Appeals Tribunal in *Nwuke* 2010-UNAT-099 (para. 6) found that:

when the claims regard issues covered by ST/SGB/2008/5, the staff member is entitled to certain administrative procedures. If he or she is dissatisfied with their outcome, he or she may request judicial review of the administrative decisions taken. **The [Tribunal] has jurisdiction to examine the administrative activity (act or omission) followed by the Administration after a request for investigation, and to decide if it was taken in accordance with the applicable law.** The [Tribunal] can also determine the legality of the conduct of the investigation. (Emphasis added)

74. While the above-mentioned case law refers to issues covered by ST/SGB/2008/5, the Tribunal is of view that it is equally applicable to issues covered by ST/SGB/2019/8 *mutatis mutandis*.

75. Accordingly, the Tribunal finds that the application is receivable.

Whether the Administration failed to take appropriate measures to promote a harmonious work environment and protect the Applicant from prohibited conduct

76. The Tribunal recalls that the “duty of care has a multidimensional nature and can have different meanings depending on the context in which it is applied” (*Campeau* UNDT/2017/091, para. 38). The Organization’s duty of care towards its staff members implies, first and foremost, that it has to provide a harmonious work environment that protects the physical and psychological integrity of its staff members (see, e.g., *Edwards* UNDT/2011/022 Corr.1, para. 63; *Corbett* UNDT/2011/195, para. 71). In the case at hand, it can be understood as the Organization’s obligation to take appropriate measures to promote a harmonious work environment and protect its staff members from prohibited conduct.

77. This duty was codified in ST/SGB/2008/5, which provides in relevant part that:

Section 2

General principles

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.

78. Sec. 3.2 of ST/SGB/2019/8, which superseded ST/SGB/2008/5 on 10 September 2019, restated, in terms close to those of ST/SGB/2008/5 that:

Obligations of the Organization

3.2 The Organization shall:

(a) Take appropriate measures to promote a harmonious work environment and protect personnel from prohibited conduct through preventive measures as set out in the present bulletin and under ST/AI/2017/1 and ST/SGB/2017/2/Rev.1.

79. Moreover, the Tribunal notes that the prohibited conduct refers to “discrimination, harassment, including sexual harassment, and abuse of authority” (see sec. 1.1 of ST/SGB/2019/8; sec. 1.5 of ST/SGB/2008/5).

80. Turning to the present case, the Applicant submits that the Administration breached its duty of care towards him, and specifically its obligation to take appropriate measures to promote a harmonious work environment and protect him from prohibited conduct of his supervisee, i.e., Mr. M. In support of his claim, the Applicant alleges that the interim measures were inadequate and that there was unjustifiable delay in handling his report of prohibited conduct. He also expressed dissatisfaction with the Respondent’s treatment of the alleged defamatory allegations of age and national origin discrimination. In addition, the Applicant argues that the Administration failed to take appropriate measures in relation to Mr. M.’s demonstrated history of prohibited conduct towards the Applicant.

81. The Tribunal will address these allegations in turn.

The alleged insufficiency of the interim measures

82. The Applicant alleges that the interim measures taken by the Organization were insufficient. He specifically complains about the fact that the reassignment of Mr. M. was temporary in nature. In his view, he, or Mr. M., should be permanently transferred, while the investigation had not been completed at the time of the application.

83. The Tribunal finds no merits in the Applicant's submissions in this respect.

84. First, the Tribunal notes that sec. 6.10 of ST/SGB/2019/8 sets forth the rules and procedures governing interim measures, providing in relevant part as follows:

Interim measures

6.10 After the head of entity receives notice in writing that a person may be a target of prohibited conduct, the head of entity shall consider whether **interim measures** should be taken to protect the integrity of any investigation, **prevent the occurrence or repetition of possible prohibited conduct** and/or address risks of possible retaliation under ST/SGB/2017/2/Rev.1 or whether such measures would otherwise be in the interests of the Organization or work unit. Such measures may include:

...

(b) Reassignment of either the alleged offender or the affected individual with the consent of the alleged offender or the affected individual;

...

(f) Temporary changes in reporting lines. (Emphasis added)

85. It follows that it is up to the head of entity to consider whether interim measures should be taken with a view to protect the integrity of any investigation, prevent the occurrence or repetition of possible prohibited conduct, and/or address risks of possible retaliation or whether such measures would otherwise be in the interests of the Organization or work unit.

86. The Tribunal is of the view that the Organization is best placed to assess whether the measures taken would be in its interests and ultimately determine which measures are appropriate. Moreover, pursuant to sec. 6.10 (b) of ST/SGB/2019/8, reassignment of the alleged offender is subject to his or her consent.

87. As such, sec. 6.10 of ST/SGB/2019/8 does not create a right or an entitlement for a complainant to be permanently transferred or to have the alleged offender permanently transferred. Accordingly, the Organization did not have an obligation to permanently reassign the Applicant or Mr. M. while the investigation had not been completed at the time this application was lodged.

88. Second, the Tribunal is not convinced by the Applicant's claim that the temporary assignment of Mr. M. was insufficient.

89. Pursuant to sec. 6.10 of ST/SGB/2019/8, the head of entity shall consider whether interim measures should be taken after he or she "receives notice in writing that a person may be a target of prohibited conduct". In the case at hand, although the Applicant seems to suggest that he suffered emotional stress from years of exposure to Mr. M.'s "unacceptable behaviour", the evidence on record shows that it was only on 5 July 2019 when the Applicant referred to sec. 2.2 of the former ST/SGB/2008/5 and requested the discontinuation of the reporting line. Furthermore, it was only until 13 February 2020 when the Applicant for the first time filed a formal complaint under ST/SGB/2019/8 against Mr. M., alleging that he raised unfounded, malicious and highly prejudicial accusations of discrimination against him.

90. Nevertheless, the evidence on record shows that pending the investigation, Mr. M. was reassigned to another section and the reporting line between Mr. M. and the Applicant was discontinued as of 17 July 2019 and Mr. M's reassignment was extended beyond the closure of the case. Moreover, effective 1 April 2022, Mr. M. was permanently moved, with his position, outside of the Applicant's supervision.

91. The Tribunal further recalls that staff regulation 1.2(c) provides that staff members are subject to assignment by the Secretary-General to any of the activities or offices of the Organization. Thus, it is within the Organization's authority and discretion to reassign a staff member. Accordingly, contrary to the Applicant's suggestion, whether the temporary assignment was initiated by Mr. M. or not is irrelevant to determining whether the Organization fulfilled its obligation to take appropriate measures or not.

92. In addition, the fact that on three separate occasions in 2020, Mr. M. was due to imminently return under the Applicant's supervision does not render the interim measures invalid or insufficient. Indeed, in practice, Mr. M.'s temporary assignment was extended, and he had never returned to the Applicant's supervision while the investigation was pending.

93. Accordingly, in the Tribunal's view, the Organization took appropriate interim measures to prevent the occurrence or repetition of possible prohibited conduct. Indeed, the Applicant did not present any evidence of renewed or repeated instances of inappropriate interaction between Mr. M. and him since the arrangement was put into place.

The alleged unjustifiable delay

94. The Applicant submits that the Administration took 18 months from the report of prohibited conduct to issue the written reprimand. More pertinently, the Administration took over one year to determine Mr. M.'s defamatory allegations against the Applicant to be unsubstantiated – an unjustifiable delay which contravened its duty of care towards the Applicant.

95. The Tribunal notes that, in relation to the alleged "prohibited conduct", the Applicant refers to the incident that took place on 17 April 2018 during a discussion between Mr. M. and the Applicant in Mr. M.'s office. The evidence on record shows that the investigation panel established two contradictory accounts of this incident between Mr. M. and the Applicant, one from each of them. However, since there were no witnesses present during the incident, there was no evidence to confirm either version in finality.

96. Moreover, the chronology of the event shows that on 25 May 2018, Mr. F. and the Applicant reported to HRMS, UNODC allegations of insubordinate, disrespectful and belligerent behaviour by Mr. M. and on 10 September 2018, the Director, DM notified Mr. M. of its intent to issue him a written reprimand and requested comments from Mr. M. in this respect. Upon receipt of Mr. M.'s comments on 1 October 2018 and 26 April 2019, which included allegations against the Applicant, HRMS sought comments from the Applicant and Mr. F. on 4 July 2019. On 1 August 2019, Mr. F. responded to the allegations raised by Mr. M. It was following a reminder from HRMS on 30 October 2019 when the Applicant confirmed that he entirely endorsed Mr. F.'s comments of 1 August 2019 in relation to Mr. M.'s allegation.

97. While the Applicant does not point to any statutory deadline in relation to the treatment of his report of prohibited conduct and the alleged defamatory allegations, the Tribunal notes that two factors delayed the process in question. First, the Applicant did not provide his comments on Mr. M.'s allegation within a reasonable period of time. Indeed, it took almost four months for him to provide his comments as requested. Second, there was a justified delay by Mr. M. Indeed, the evidence on record shows that he was on authorized sick leave between October 2018 and February 2019 which delayed his submission of further comments.

98. Accordingly, the Tribunal finds that the Applicant failed to establish that the Administration unjustifiably delayed the processes at issue.

The alleged defamatory allegations of age and national origin discrimination

99. With respect to the alleged defamatory allegations against the Applicant during a reprimand procedure, the evidence on record shows that the investigation panel could not establish the Applicant's allegation that Mr. M. had made unfounded, malicious, or knowingly false allegations of a prejudicial nature against him. In this regard, the Tribunal notes that the Applicant did not request management evaluation of the relevant decision within the prescribed deadlines.

100. The Tribunal also notes that the allegations of age and national origin discrimination were not made in a public setting, but in response and defence to a process of obtaining Mr. M's comments for a potential reprimand. Therefore, it could not be established that such allegations were defamatory.

101. Moreover, the Administration provided the Applicant an opportunity to comment on Mr. M.'s allegations and did not take an adverse decision against him. Also, the evidence on record shows that the Applicant withdrew his unsubstantiated allegations to move the performance document forward.

102. Accordingly, the Applicant fails to demonstrate that the Administration did not take appropriate measures in relation to the allegations of age and national origin discrimination.

The alleged demonstrated history of prohibited conduct towards the Applicant

103. The Tribunal notes that contrary to the Applicant's contention, there is no evidence to show that Mr. M. has a "demonstrated history of prohibited conduct towards the Applicant". Indeed, having investigated the Applicant's complaints against Mr. M., the investigation panel finds no prohibited conduct such as harassment or discrimination towards the Applicant.

104. Instead, in the fact-finding process, the investigation panel obtained many statements and documentation establishing a longstanding, well-documented history of professional and personal conflict between the Applicant and Mr. M.

105. In this respect, the Tribunal notes that the Administration proposed additional measures such as trainings and coaching to the Applicant, as Mr. M.'s supervisor, to enable him to address some of the performance-related or miscommunication issues he may have had with Mr. M.

106. Accordingly, the Tribunal finds no merit in the Applicant's submissions regarding Mr. M.'s "demonstrated history of prohibited conduct towards the Applicant".

107. In light of the above, the Tribunal finds that the Applicant fails to demonstrate that the Administration did not take appropriate measures to promote a harmonious work environment.

Whether the Applicant is entitled to any remedies

108. In his application, the Applicant seeks damages for moral harm and emotional distress resulting from the Administration's breach of its duty to ensure a harmonious work environment.

109. Having found that the Applicant failed to establish that the Respondent acted in any manner contrary to law, the Tribunal finds no basis for the remedies pleaded for in the application.

110. Therefore, the Tribunal rejects the Applicant's request for remedies.

Conclusion

111. In view of the foregoing, the Tribunal DECIDES to reject the application in its entirety.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 30th day of June 2022

Entered in the Register on this 30th day of June 2022

(Signed)

René M. Vargas M., Registrar, Geneva