UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2021/041
Judgment No.: UNDT/2022/133
Date: 22 December 2022
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:
George G. Irving

Counsel for Respondent:
Steven Dietrich, AAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a staff member of the United Nations Department of Safety and Security ("UNDSS"), filed an application with the Tribunal contesting the decision to issue him a written reprimand and to place it in his Official Status File ("OSF").

Facts

2. Effective 18 July 2011, the Applicant joined the Organization as a Security Officer at the P-3 level with the United Nations Mission in Kosovo ("UNMIK"). From November 2016 to June 2017, he served as acting Chief Security Officer ("CSO") at UNMIK. In June 2017, upon the arrival of the new CSO, he became Deputy CSO. Effective 12 September 2018, he was reassigned to Somalia where he currently serves as Security Coordination Officer with UNDSS.

3. By memorandum dated 27 October 2016, the then Security Advisor and CSO/UNMIK ("ex-CSO") reassigned Ms. A. (unique one-letter substituting the person's name and bearing no resemblance to the person's real name or other identifying characteristics), a local staff member, from her role as a Security Information Assistant with the Security Information Coordination Cell ("SICC") to the position of Security Officer in the Security Operations Centre ("SOC") of the UNMIK Security Section effective 1 November 2016. The then Security Advisor and CSO left UNMIK in early November 2016 and the Applicant assumed the role of acting CSO.

4. By email on 7 November 2016, Ms. A. contacted the Special Representative of the Secretary-General ("SRSG") at UNMIK to express her concerns about the reassignment decision. She indicated, *inter alia*, that she was not able to work shifts as required in the new role she was reassigned to due to family commitments and health reasons.

5. On 5 December 2016, the Applicant sent an email to the ex-CSO about allegations made by Ms. A. against him. Upon receipt of this email, the ex-CSO requested UNMIK that an official investigation be conducted into the matter.

6. On 15 January 2017, Ms. A. filed a complaint for harassment, discrimination, and abuse of authority against the Applicant with the UNMIK Conduct and Discipline Unit. Her complaint cited, among other things, the Applicant's refusal to assign her back to the SICC. A fact-finding panel was appointed on 25 February 2017, and an investigation was conducted. The Applicant was interviewed on 30 March 2017. The fact-finding panel issued its report on 31 May 2017 clearing the Applicant of having engaged in prohibited conduct.

7. In the interim, on 2 February 2017, Ms. A. filed a request for protection against retaliation with the United Nations Ethics Office ("UNEO"), in which she alleged, *inter alia,* that the Applicant had retaliated against her in the context of her reassignment and had attempted to terminate her contract.

8. Effective 1 April 2017, Ms. A. returned to her previous position in the SICC.

9. In a decision issued on 27 March 2017, UNEO found that there was no *prima facie* case of retaliation against Ms. A.

10. By memorandum dated 5 April 2017, the UNMIK Conduct and Discipline Officer, referred a case of alleged rumours against the ex-CSO ("the rumour case") to the Applicant's office for investigation. The rumour case was about the alleged detention of the ex-CSO and involved Mr. A. as a possible source of the rumours. The Applicant assigned Mr. F., a Security Officer, to conduct the investigation. However, following Mr. F.'s departure on family emergency leave, he assigned Mr. T., Regional Security Supervisor, to take over the case and finalize it. The investigation report on the matter, dated 27 June 2017, was inconclusive about the source of the rumours.

11. On 13 June 2017, Ms. A. filed a second request for protection against retaliation with UNEO alleging retaliation by the Applicant following the filing of her 15 January 2017 complaint against him with the UNMIK Conduct and Discipline Unit. Ms. A. alleged that the following acts were retaliatory:

> (i) [The Applicant] was behind an investigation wherein [she] is alleged to have spread [rumours] against the former Security Advisor;

(ii) [The Applicant] did not allow [her] to work in the SICC office premises despite her return to the SICC;

(iii) The investigation of her harassment, discrimination and abuse of authority report against [the Applicant] was not handled properly or according to standards;

(iv) [The Applicant] tasked several staff in [Ms. A.'s] supervisory line to scrutinize her by using the access system to illegally monitor her, as well as in other ways; and

(v) [The Applicant], as her Second Reporting Officer ("SRO"), instructed […] her FRO to write poor comments in her 2016/17 ePAS.

12. On 12 July 2017, following a review of Ms. A.'s second request for protection against retaliation, UNEO concluded that Ms. A. had engaged in protected activities by virtue of her emails of 7 November 2016 to the SRSG and her report of 15 January 2017 to the UNMIK Conduct and Discipline Unit. Consequently, UNEO found a *prima facie* case of retaliation against Ms. A. regarding the following reported actions of the Applicant:

(i) Either providing confidential information or guiding investigations in a manner that leads one to believe that he was using the investigation mechanisms to target [Ms. A.];

(ii) Scrutinizing and monitoring [Ms. A.]'s actions with [the] intent to find cause to have her terminated from service; and

(iii) Acting through [Ms. A.'s] [FRO] to include negative comments in [Ms. A.]'s 2016/17 ePAS.

13. On the same date, UNEO referred the matter to the Office of Internal Oversight Services ("OIOS") for investigation. However, on 18 July 2017, UNEO informed OIOS that Ms. A. had agreed to attempt an informal resolution of her complaint. Accordingly, the investigation was suspended.

14. On 12 October 2017, UNEO advised OIOS that the informal resolution efforts had not been successful and that, consequently, the investigation should proceed.

15. OIOS proceeded with the investigation and interviewed the Applicant on 24 August 2018. The interview was audio-recorded, and a copy of the recording was provided to the Applicant. On 2 October 2018, the Applicant provided OIOS with a written statement and supporting evidence.

16. In its report dated 31 December 2018, OIOS found that the established facts constituted reasonable grounds to conclude that the Applicant's conduct was inconsistent with the standards expected of a United Nations civil servant. OIOS found that the Applicant had engaged in retaliatory conduct against Ms. A. with respect to points (i) and (ii) of para. 12 above. However, it found no evidence that the Applicant influenced Ms. A.'s FRO to include negative comments on her 2016/2017 ePAS.

17. On 4 March 2019, the SRSG at UNMIK referred the case to the Office of Human Resources ("OHR") for appropriate action.

18. By memorandum of 5 November 2020, the Director of the Administrative Law Unit, Office of Human Resources ("D/ALU/OHR") informed the Applicant of the allegations of misconduct against him.

19. On 22 January 2021, the Applicant responded to the allegations of misconduct.

20. By letter dated 8 June 2021, the ASG/OHR informed the Applicant of the decision not to recommend the imposition of a disciplinary measure against him but to close the matter with the issuance of a written reprimand that would be placed on his OSF.

21. On 8 July 2021, the Applicant filed the present application.

22. On 11 August 2021, the Respondent filed his reply.

23. By Order No. 113 (GVA/2022) of 23 November 2022, the Tribunal instructed the parties to file their respective closing submission.

24. Closing submissions were filed by the Applicant on 29 November 2022 and by the Respondent on 30 November 2022.

Consideration

Anonymization of the Applicant's name

25. Article 11.6 of the Tribunal's Statute provides in its relevant part that its judgments shall be published while protecting personal data. A similar provision is contained in art. 26.2 of the Tribunal's Rules of Procedure. Given that the present case relies on medical evidence to support a claim for moral harm, the Tribunal finds that it is reasonable to redact the Applicant's name from this judgment.

Scope of judicial review

26. The Tribunal has consistently ruled that the Administration has the duty to act fairly, justly, and transparently in dealing with staff members (See *Matadi et al.* 2015-UNAT-592, para. 17), and the validity of the exercise of discretionary authority is judged under the legal principles set forth in *Sanwidi* 2010-UNAT-084, at para. 40, which provides that:

> 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.

27. The Appeals Tribunal has also held that judicial review is focused on how the decision-maker reached the impugned decision, and not on the merits of the decision-maker's decision (see *Sanwidi* 2010-UNAT-084, para. 42 and *Santos* 2014-UNAT-415, para 30).

28. In *Yasin* 2019-UNAT-915, para. 47, the Appeals Tribunal held that:

> Although the reprimand is not a disciplinary measure but an administrative one, because of its adverse impact on the concerned staff member's career, it must be warranted on the basis of reliable facts, established to the requisite standard of proof, namely that of "preponderance of evidence", and be reasoned in order for the Tribunals to have the ability to perform their judicial duty to review administrative decisions and to ensure protection of individuals, which otherwise would be compromised.

29. It is settled jurisprudence that in reviewing decisions imposing a sanction, be it disciplinary or administrative, the Tribunal's scope of review is limited to determining whether: an applicant's due process rights were respected, the facts underlying disciplinary or administrative measures were established, the established facts amount to the alleged conduct, and the sanction was proportionate to the offence (see *Elobaid* UNDT-2017-054, para. 36, *Gharagozloo Pakkala* UNDT/2021/076, para. 12, and *Applicant* 2012-UNAT-209, para. 36). The Tribunal therefore proceeds to review these issues in the following sections.

Have the facts on which the measure was based been established?

30. The Respondent claims that the letter of reprimand is based on reliable facts established after a thorough and careful investigation.

31. The Applicant argues that the conclusion that it was inappropriate to share information with the alleged offender is misplaced. He also argues that the criticism of failing to declare a conflict of interest in the investigation of the rumour case is equally ill-founded.

32. The Tribunal notes that the written reprimand is based on two main grounds: i) the Applicant's alleged disclosure of confidential information to the ex-CSO regarding Ms. A.'s allegations of sexual nature against him, and ii) the Applicant's alleged conflict of interest in the investigation of the rumour case, which involves Ms. A. and the ex-CSO.

The alleged disclosure of confidential information

33. At the outset, the Tribunal notes that the Applicant argues that UNEO, whose second recommendation led to the OIOS investigation, never explained why it departed from its earlier finding that there was no *prima facie* case of retaliation. He also claims that UNEO never spoke to him and did not assess the credibility of the complainant.

34. In this respect, the Tribunal recalls that UNEO reviewed two separate complaints filed by Ms. A. against the Applicant. The findings of UNEO in the first complaint do not necessarily compromise its findings in the second complaint, which involved additional issues. Furthermore, following UNEO's findings in relation to the second complaint, OIOS conducted an investigation in which the Applicant and Mr. A. were interviewed, and their credibility was assessed. Ultimately, the written reprimand was based on the OIOS findings following the investigation into the matter rather than on the UNEO's recommendation. Therefore, the Applicant's argument in this regard is unsubstantiated.

35. Turning to the alleged disclosure of confidential information, the Tribunal notes that on 5 December 2016, the Applicant sent an email to the ex-CSO, which provides, in its relevant part, the following (emphasis in original):

> On 1 December when I met [Ms. A.], she claimed that the reason for her re-assignment to another unit was your alleged sexually oriented tenderness towards her, and that she refused to accept your approach.
>
> …
>
> I told her there were two issues here; one being her new roles and responsibilities, which she was expected to get into sooner than later, other one being her allegations (for which she has the right to pursue available UN mechanisms).
>
> I understand (although [cannot] officially confirm) that she has already written letters to some individuals within the Mission, concerning the above allegation, I have not been CC'ed into those.
>
> I [thought] you should know these allegations by her, and decide what you want to do about it.

36. In his interview with OIOS, the Applicant indicated that Ms. A. had informed him in a conversation on 14 November 2016 that the reason for her reassignment was that the ex-CSO had "sexually [harassed] [her] and [she] [had] not [surrendered] to his requests". He also indicated that she had threatened to damage the ex-CSO "personally and professionally".

37. According to the transcript of his interview, the Applicant advised her to "follow the available UN mechanisms" and informed her of her right to file a complaint against the ex-CSO. In the same interview, the Applicant also acknowledged that normally Ms. A.'s allegations should remain confidential but stated that since Ms. A. was talking about this "everywhere", he decided to write to the ex-CSO to inform him about said allegations. The Applicant basically reiterated the same information in his written statement to OIOS.

38. In its investigation report, OIOS found, *inter alia*, that regardless of who Ms. A. told about having been sexually harassed by the ex-CSO, and irrespective of his own personal feelings and opinions about the matter, informing the ex-CSO of the allegations, the very subject of the potential prohibited conduct, runs counter to the Applicant's duties and obligations as a senior manager.

39. The Applicant claims in his application that he never informed the ex-CSO that he had been accused of sexual harassment but only told him that Ms. A. had claimed that the reason for her reassignment had been "his sexual feelings for her".

40. Having reviewed the evidence on record, the Tribunal considers that regardless of the words used by the Applicant in his 5 December 2016 email, it is clear that he was aware of the gravity of Ms. A.'s allegations of sexual nature and of their confidential character. Nevertheless, he shared those allegations with the ex-CSO, who was the alleged offender.

41. In his application, the Applicant states that he sent the 5 December 2016 email to the ex-CSO as he asked him to write an email on the matter so he could raise the issue with the SRSG. The Applicant also claims that the email was not about sexual harassment and that the wording used thereby was very precise because the issue was about "threatening other staff".

42. The Tribunal is not convinced by the Applicant's argument. No matter the motivation behind the Applicant's email, it was inappropriate for him to share the Applicant's allegations with the ex-CSO. Furthermore, even if Ms. A. had threatened to damage the ex-CSO as the Applicant claims, this does not justify sharing Ms. A.'s allegations with the ex-CSO.

43. Furthermore, regardless of whether Ms. A. had actively discussed the allegations with other staff, as the Applicant claims in his application, it remains that it was totally inappropriate for him to share the allegations of sexual harassment with the alleged offender as it could have adversely impacted on the alleged victim even if, by then, the ex-CSO had already left UNMIK.

44. In light of the above, the Tribunal finds that it is established by a preponderance of evidence that the Applicant disclosed confidential information to the ex-CSO regarding Ms. A.'s allegations of sexual nature against him.

The Applicant's alleged conflict of interest

45. The Respondent asserts that the Applicant failed to disclose a conflict of interest and to recuse himself from participating in the investigation of the rumour case that had been assigned to his office.

46. The Applicant argues that there was no subject of this investigation as it was merely to ascertain the facts.

47. The Tribunal notes that by memorandum dated 5 April 2017, the rumour case was assigned to the Applicant's office for investigation. This case was about rumours of the ex-CSO's alleged arrest, which the ex-CSO perceived as a deliberated misinformation campaign aimed at undermining his image.

48. The 5 April 2017 memorandum indicated that the ex-CSO had identified a person he thought was the source of the rumour and included as an attachment a copy of an e-mail of 20 March 2017 by the ex-CSO entitled "Re: Ms. A.", whereby he clearly identified her as the source of the rumours and named the Applicant as a person with whom he had spoken about the issue.

49. The evidence also shows that the Applicant was interviewed on 30 March 2017 as a subject of the allegations of harassment and abuse of authority raised against him by Ms. A. in her complaint of 15 January 2017. Therefore, by the time the rumour case was assigned to the Applicant's office on 5 April 2017, he was already aware of Ms. A.'s allegations against him. Furthermore, knowing that Ms. A. had been identified as the source of the rumours, he was in a conflict of interest that he should have disclosed.

50. The Applicant claims that by email dated 15 March 2017 to the Conduct and Discipline Unit, he suggested assigning the case to an external investigator, and that the Respondent did not adopt his suggestion, implying that there was no personal interest in the matter to be mitigated.

51. In this respect, the Tribunal notes that while by the said email, the Applicant indeed suggested a security external investigator for the assignment, there is no evidence that he ever disclosed the conflict of interest. Therefore, his argument has no merits.

52. The Applicant further claims that he removed himself from any decision-making role in the investigation as he appointed another security official, Mr. F., to conduct the investigation, and upon Mr. F.'s departure on leave, he assigned Mr. T. to finalize the report.

53. The Tribunal has reviewed the evidence on record and finds that the Applicant played an active role in the investigation. Indeed, the OIOS investigation report and the documentary evidence on record show that:

a. The Applicant approved the questions prepared by Mr. F. Although the Applicant denied that he asked to see the questions, he responded to Mr. F. that the questions were fine;

b. The Applicant gave instructions to Mr. F. regarding the first four witnesses to be interviewed, which included the Applicant; and

c. The Applicant attended the interviews of two witnesses (Mr. N. and Mr. R.), the latter of whom stated that the Applicant asked most of the questions "demanding to know from him who had told him the rumour". Although the Applicant denied that he had led Mr. R.'s interview, he admitted questioning the witness as Mr. F. was allegedly not well prepared.

54. In view of the above, the Tribunal finds that it has been established by a preponderance of evidence that Applicant failed to disclose a conflict of interest and to recuse himself from participating in the investigation of the rumour case.

Do the established facts amount to the alleged conduct?

The alleged disclosure of confidential information

55. Section 3.2 of the former ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) provides that:

> 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.

56. The former ST/SGB/2008/5 also states in secs. 5.2 and 5.12 that:

> 5.2 All reports and allegations of prohibited conduct shall be handled with sensitivity in order to protect the privacy of the individuals concerned and ensure confidentiality to the maximum extent possible.
>
> …
>
> 5.12 In all instances, aggrieved individuals or third parties who have direct knowledge of the situation may report cases of prohibited conduct directly to the Office of Internal Oversight Services, without the need to obtain authorization or clearance from any official.

57. Having considered the evidence on record, the Tribunal finds that by disclosing confidential information to the ex-CSO regarding Ms. A's allegations of sexual nature against him, the Applicant failed to fulfil his obligations as a manager pursuant to secs. 3.2 and 5.2 of the former ST/SGB/2008/5. Furthermore, even if Ms. A. had threatened to damage the ex-CSO as the Applicant claims, this does not justify sharing Ms. A.'s allegations with him as stated in para. 42 above.

58. If the Applicant had concerns about the allegations raised by M. A., he could have reported them to OIOS or the responsible official as per sec. 5.12 of the former ST/SGB/2008/5. Sharing Ms. A.'s allegations with the alleged offender was not only a lack of judgment but a failure to comply with his obligations as a manager, and this is regardless of whether Ms. A. decided to file a formal complaint or not against the ex-CSO in relation to the allegations.

The Applicant's alleged conflict of interest

59. Staff regulation 1.2(m) defines conflict of interest as follows:

> A conflict of interest occurs when, by act or omission, a staff member's personal interests interfere with the performance of his or her official duties and responsibilities or with the integrity, independence and impartiality required by the staff member's status as an international civil servant. When an actual or possible conflict of interest does arise, the conflict shall be disclosed by staff members to their head of office, mitigated by the Organization and resolved in favour of the interests of the Organization.

60. Staff rule 1.2(q) provides for the obligation of a staff member "to disclose any such actual or possible conflict of interest to the head of office" and to "formally excuse himself or herself from participating with regard to any involvement in that matter which might give rise to a conflict of interest situation".

61. The Applicant claims that no personal interest had been identified that interfered with the investigation involving other parties and no adverse action has resulted. He points out that the investigation of the rumour case had nothing to do with Ms. A.'s reassignment or her complaints against the Applicant.

62. Contrary to his argument, the Tribunal finds that the Applicant was clearly in a conflict of interest as indicated in para. 49 above. He should have disclosed such conflict of interest to the head of office, and recused himself from participating in any way in the investigation of the rumour case. By failing to do so, the Applicant was in breach of staff regulation 1.2(m) and staff rule 1.2(q).

Was the measure applied proportionate to the offence?

63. In *Sanwidi* 2010-UNAT-084 (para. 39, in its relevant part), the Appeals Tribunal held that:

> In the context of administrative law, the principle of proportionality means that an administrative action should not be more excessive than is necessary for obtaining the desired result. The requirement of proportionality is satisfied if a course of action is reasonable, but not if the course of action is excessive.

64. Staff rule 10.2 on disciplinary measures reads as follows in its relevant part (emphasis added):

> (a) Disciplinary measures may take one or more of the following forms only:
>
> (i) Written censure;
>
> …
>
> **(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.**

65. Considering that the Applicant disclosed confidential information to the ex-CSO regarding Ms. A.'s allegations of sexual nature against him and that he failed to disclose a conflict of interest and to recuse himself from participating in the investigation of the rumour case, the Tribunal finds that the imposition of a written reprimand, which is not a disciplinary measure, is totally justified and reasonable.

66. The Tribunal recalls that reprimands are administrative measures, which are important for upholding standards of proper conduct and promoting accountability.

67. The Applicant contends that the reprimand was misused in this instance, and that reprimands should not be used simply to avoid the stricter requirements of disciplinary sanctions. However, the evidence shows that the written reprimand was issued following a disciplinary process against the Applicant. Therefore, his argument fails.

Were the Applicant's due process rights respected during the investigation and disciplinary process?

68. The evidence shows that on 12 July 2017, following a review of Ms. A.'s second request for protection against retaliation, UNEO referred the matter to OIOS for investigation. The Applicant was interviewed on 24 August 2018, and he was provided with a copy of the interview recording. He provided OIOS with a written statement and supporting evidence on 2 October 2018.

69. The investigation was concluded on 31 December 2018, and the Applicant was informed of the formal allegations of misconduct against him by a memorandum dated 5 November 2020 to which the investigation report was attached. The Applicant was granted one month from receipt of this memorandum to provide a written response, and was informed of his right to avail himself of the assistance of the Office of Staff Legal Assistance, or seek the assistance of any other counsel in his defence at his own expense.

70. However, following his request for an extension of time and after giving him access to the supporting documents of the investigation report, he provided his response to the allegations memorandum on 22 January 2021. The Applicant's response to the allegations was considered by the ASG/OHR in the decision letter.

71. In light of the above, the Tribunal finds that the Applicant's due process rights were respected as per staff rule 10.2(c).

72. Turning to the issue of the delay in completing the investigation, the Respondent acknowledged that under section 8.1 of ST/SGB/2017/2/Rev.1 (Protection against retaliation for reporting misconduct and for cooperating with duty authorized audits or investigations), OIOS will seek to complete its investigation and submit its report to UNEO within 120 days, However, the investigation in the present case took approximately 14 months to be completed, namely from 12 October 2017 to 31 December 2018.

73. According to OIOS, this was due to several factors including (i) a planned mission to Kosovo, scheduled for August 2018, for the purpose of conducting two key witness interviews and the Applicant's interview, which was suspended and eventually cancelled because the two witnesses went on medical leave; (ii) the Applicant was interviewed on 24 August 2018 and he was granted an extension of time to provide his written statement until 3 October 2018; and (iii) based on the Applicant's submission, two additional witnesses were interviewed and inquiries were made with a third witness. The Tribunal notes that while OIOS explanations are reasonable for the period from August to December 2018, the Respondent failed to provide information for the period from October 2017 to August 2018.

74. The Tribunal also notes with concern that while the investigation was concluded on 31 December 2018, the disciplinary process was only completed on 8 June 2021 when the decision letter was issued. The Tribunal finds that a delay of almost two years and a half in deciding on the matter is unjustified.

75. The Tribunal recalls that it is the responsibility of the Organization to conduct disciplinary matters in a timely manner to avoid a breach of the staff member's due process rights (see *Austin* UNDT-2013-080 para. 40) as well as to avoid keeping a staff member in a "limbo" concerning the outcome of a disciplinary process (see *Applicant* UNDT/2019/129/Corr.1, para. 87).

Is the Applicant entitled to any compensation?

76. The Tribunal recalls that art. 10.5(b) of its Statute, as amended by General Assembly resolution 69/203 adopted on 18 December 2014, provides that compensation for harm may only be awarded where supported by evidence.

77. Furthermore, the constant jurisprudence of the Appeals Tribunal provides that:

> [C]ompensation for harm shall be supported by three elements: the harm itself; an illegality; and a *nexus* between both. It is not enough to demonstrate an illegality to obtain compensation; the claimant bears the burden of proof to establish the existence of negative consequences, able to be considered damages, resulting from the illegality on a cause-effect lien … A breach of staff member's rights, despite its fundamental nature, is thus not sufficient to justify such an entitlement. There must indeed be proven harm stemming directly from the Administration's illegal act or omission for compensation to be awarded" (see *Kebede* 2018-UNAT-874, paras. 20-21).

78. In his application, the Applicant request compensation for damages. He points out that he awaited a decision on the matter for almost four years and that the Administration's inaction and undue delay seriously harmed his professional reputation and health. He claims that he suffered from stress, which resulted in a condition of post-traumatic stress disorder ("PTSD") requiring medical treatment over an extended period. He submitted four psychiatric reports as evidence of harm. The medical reports show that he was diagnosed with an anxiety disorder demonstrating a high level of stress and interruption of his sleep pattern but did not refer to PTSD.

79. A medical report dated 6 August 2020 indicates that the investigation process started in July 2017, and that the Applicant did not have information about the investigation outcome by the time the report was made. It specifically provides the following (emphasis in original):

> He demonstrated a high level of stress related to the investigation. The stress affected several areas of his life, such as career, family life and psychological well-being. He is presenting symptoms such as: concerns, fears of losing his current job, insecurity. The most affected area is interrupted sleep pattern[.]
>
> On a behavioural level he is presenting symptoms as: restlessness, difficulties with failing in sleep or staying asleep.
>
> On a psychological level he has many worries and fears, demonstrating negative thinking and difficulties to concentrate.
>
> Initial psychological impression: **Anxiety disorder**.

80. Another report dated 17 August 2020 indicates that the Applicant felt "frustration and anger" as well as "uncertainty deriving from the lack of information" in relation to the ongoing investigation.

81. A third report dated 19 April 2021 provides, in relevant part, that:

> His anxiety is at [the] highest level as previously. He is still feeling symptoms of [restlessness], [irritation], and has lack of sleep during the night. When he got the report for investigation he felt shocked, disappointed and felt frustrated. In my opinion his psychological state is worst now due to prolonged stress related to an ongoing investigation mixed with an expected transfer for work[.]
>
> He is referred to visit a psychiatrist to get a medical therapy.

82. Similarly, a report dated 2 June 2021 states that the "overdue investigation processes caused him symptoms of restlessness, sleeplessness, lack of concentration, anger, and fear" and that he had been diagnosed with an "anxiety disorder by his psychotherapist". The psychiatrist further indicated in his report that during his sessions with the Applicant in May and June he "observed [a] severe level of anxiety disorder, with the symptoms of sleeplessness, fatigue, concentration

disorder, pounding heartbeat [and] severe headaches" and indicated that he had prescribed the Applicant medication.

83. In light of the above-mentioned evidence, the Tribunal finds that there is a causal link between the undue delay in completing the disciplinary process and the deterioration of the Applicant's mental health and well-being. As a consequence, the Tribunal finds it appropriate to award him compensation for moral harm in the amount of USD5,000.

Conclusion

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

a. The application is partially granted. The contested decision is upheld but the Respondent shall pay the Applicant compensation in the amount of USD5,000 for moral damages;

b. The aforementioned compensation shall bear interest at the United States of America prime rate with effect from the date this Judgment becomes executable until payment of said compensation. An additional five per cent shall be applied to the United States prime rate 60 days from the date this Judgment becomes executable; and

c. All other claims are rejected.

(*Signed*)
Judge Teresa Bravo
Dated this 22nd day of December 2022

Entered in the Register on this 22nd day of December 2022
(*Signed*)
René M. Vargas M., Registrar, Geneva