



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

HUMACKIC

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Nicole Wynn, AS/ALD/OHR, UN Secretariat

Fatuma Mninde-Silungwe, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant served as a Contract Management Officer at the United Nations Interim Force in Lebanon (“UNIFIL”) at the FS-6 level.
2. On 5 September 2022, she filed an application in which she contests a decision which she erroneously identifies as a 6 June 2022 Management Evaluation Unit (“MEU”) response. Factually, she is contesting the management’s failure to timely take an appropriate corrective action to ensure a harmonious workplace with respect to her complaints of discrimination, harassment, and abuse of authority as per ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, an abuse of authority), specifically, the non-implementation of the United Nations Office of the Ombudsman and Mediation Services’ (“UNOMS”) recommendation to the UNIFIL Force Commander to separate her from her First Reporting Officer (“FRO”).¹
3. The Respondent filed his reply on 6 October 2022, challenging the receivability of the application.

Facts

4. On 1 November 2009, the Applicant commenced service with UNIFIL as a Budget and Finance Assistant recruited at the FS-5 level. She was promoted to Contracts Management Officer at the FS-6 level in August 2018.²
5. The Applicant claimed to have been subjected to public humiliation and demeaning comments denigrating her ethnicity, professionalism and performance by her FRO”, the Chief of Acquisitions and Contract Management, since 2018.³
6. On 23 May 2019, the Applicant addressed to her Second Reporting Officer, (“SRO”), Chief of Supply Chain Management Pillar, a complaint of harassment,

¹ Application, section V, Details of the contested decision, pages 3-4, paras. 1 to 5.

² Reply, page 3, para. 5.

³ Application, section VII, page 5, para. 1.

expressing issues with her FRO.⁴

7. On 24 June 2020, the Applicant filed a complaint to the Assistant Secretary-General, Office of Human Resources (“ASG/OHR”), alleging harassment and abuse of authority against her FRO. The ASG/OHR referred the matter to the Office of Internal Oversight Services (“OIOS”) for investigation as an ST/SGB/2019/8 complaint.⁵

8. On 24 August 2020, the OIOS referred the Applicant’s case to the Mission for resolution.⁶

9. From May through December 2019 there were mediation efforts⁷, which, nevertheless, brought no results, while the Applicant’s grievance was being forwarded from one office to another.⁸

10. By letter dated 12 March 2021, the Head of Mission-Force Commander (“HoM/FC”) wrote to the Applicant informing her that in consultation with the Regional Conduct and Discipline Section (“RCDS”), it was determined that the matter involved an unsatisfactory conduct on the part of the Applicant’s FRO and contained issues that could best be addressed through performance management.⁹ The HoM/FC decided to take administrative action pursuant to ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process) that included asking the UNIFIL Chief Supply Chain Management to resume efforts to informally resolve the matter and ensure that both parties fully understand the operational expectations within the Section.¹⁰ The HoM/FC informed the Applicant that he considered that the matter was closed.¹¹

11. The Applicant did not challenge the outcome of her 24 June 2020 complaint

⁴ Application, annex 2, para. 5 (UNDT chronology of events 05.09.22).

⁵ *Ibid.*, at annexes 1(a) and 1(b); reply, page 3, para. 9.

⁶ Reply, page 3, para. 10.

⁷ Annex 2 UNDT (chronology of events 05.09.22), paras 7-10.

⁸ Application, annex 10 (email sent to DMS on 12.12.2019), Annex 2 “chronology of events”.

⁹ Reply, annex R/2, para 3 and application, annex 11.

¹⁰ *Ibid.*, at annex R/2, para. 4 and application, annex 11.

¹¹ *Ibid.*, at annex R/2, para. 7.

under ST/SGB/2019/8.

12. According to the Respondent, on the same day, 12 March 2021, the HoM/FC issued a reprimand to the Applicant's FRO and cautioned the FRO against retaliation.¹²

13. On 3 November 2021, the Applicant addressed a complaint to the Head of Mission referring to new incidents of harassment and seeking protection against retaliation by changing reporting lines.¹³

14. By email dated 12 November 2021, the DMS responded, on behalf of the HoM/FC, that it was not clear whether the Applicant's email.

[...] raises new issues that were not covered in the first complaint or contains conduct and discipline-based issues that go beyond management and/or performance parameters. If you do have new specific issues to raise, please do so formally either through C/SCM, OiC RCDS or OiC.¹⁴

15. On 24 November 2021, the Applicant filed what she terms a "second formal complaint" against her FRO to the Officer in Charge ("OiC-RCDS") alleging retaliation, harassment, misconduct, and abuse of authority.¹⁵

16. Further meetings followed.¹⁶

17. In the report dated 9 December 2021, the OIC-RCDS informed the DMS that, in her assessment, the Applicant's complaint did not amount to new allegations of misconduct but rather described a continuation of the conflict between the two staff members, and that the allegations, if substantiated, would constitute basis for management and performance concerns, but would not amount to harassment or abuse of authority nor otherwise merit a disciplinary action. OIC-RCDS' assessment was that any further mediation would be futile. She recommended to suspend the supervisory relationship between the two staff members and that allegations raised by both staff

¹² *Ibid.*, page 3, para. 11.

¹³ Application, annex 12 titled *Email sent to HoM on 03. 11.2021*.

¹⁴ Reply, annex R/6.

¹⁵ Application, annex 2(a); reply, annex R/3.

¹⁶ *Ibid.*, annex 2, (UNDT chronology of events 05.09.22).

members be addressed by way of administrative action.¹⁷

18. Despite the OIC-RCDS's recommendation, the DMS requested UNOMS to resolve the conflict by mediation.¹⁸ In December 2021 and January 2022, a Senior UNOMS Conflict Resolution Officer in Vienna carried out mediation sessions with the parties who refused to sign a mediation agreement.¹⁹

19. On 28 January 2022, UNOMS recommended to the Force Commander "to separate the two staff members from the supervisor and supervis[ee] relationship".²⁰

20. By email dated 3 February 2022, the Applicant wrote to her FRO and to the Chief of Supply Chain Management, alleging that her FRO shouted at her in the presence of other colleagues during a meeting and complaining that the harassment was affecting her health.²¹

21. According to the Respondent, UNIFIL Human Resources Section ("HRS") presented to the DMS two options on 11 February 2022: (i) reassignment of one party; or (ii) reassignment of both parties.²² On 13 April and 10 May 2022, the DMS, the CHRO, and the Chief, Supply Chain held meetings to discuss the two options presented by UNIFIL HRS. They supported the option to reassign both staff members from the Contract Management Unit to different sections within UNIFIL.²³

22. On 27 April 2022, the Applicant requested management evaluation of the implied failure to enact measures to ensure a harmonious work environment and the prevent prohibited conduct such as harassment, discrimination, and abuse of authority by her FRO.²⁴ Her complaint was that since the 12 March 2021 response from the HoM/FC setting out the course of action to address her concerns, the course of action culminated in a recommendation from the Ombudsman "to separate the two staff

¹⁷ Reply, annex R/4.

¹⁸ *Ibid.*, page 3, para 12.

¹⁹ Application, annex 14; Reply page 4, para. 15.

²⁰ *Ibid.*, at annex 14.

²¹ *Ibid.*, at annex 6.

²² Reply, page 4, para. 17.

²³ *Ibid.*, at page 4, para. 18.

²⁴ Application, annex 4.

members from the supervisor and supervis[ee] relationship”, which was not implemented. One of the remedies sought by the Applicant was that the recommended separation of herself and her FRO be implemented.²⁵

23. The DMS met separately with the Applicant and her FRO on 13 May 2022 and advised them of the proposed reassignments.²⁶

24. On 2 June 2022, the HoM/FC notified the Applicant and her FRO of their reassignments to other sections.²⁷

25. The MEU replied on 6 June 2022 noting that the UNIFIL Administration had already advised the Applicant of her lateral reassignment, and, as such, that her request for a management evaluation was moot.²⁸

26. On 1 July 2022, the Applicant was reassigned to the UNIFIL Procurement Unit. The same day, the Applicant's FRO was reassigned to the position of Chief, Contingent Owned Equipment at the P-4 level.²⁹

27. The Applicant challenged the reassignment in a separate case No: UNDT/NBI/2022/108.

Considerations

28. The Respondent case is that the application should be dismissed as not receivable due to the failure by the Applicant to identify a specific administrative decision to be challenged in clear and precise terms, alternatively – that the Applicant did not request a timely management evaluation.

29. The Tribunal finds that the Applicant filed two formal complaints, alleging workplace harassment by her supervisor. The complaint dated 23 May 2019 and repeated in a memorandum of 24 June 2020 (“first complaint”) resulted in a decision

²⁵ *Ibid.*, at Section VII, page 5, para. 3 (2nd para 3).

²⁶ Reply, page 5, para. 20.

²⁷ *Ibid.*, at page 5, para. 21. Reply, annex R/5.

²⁸ Application section VII, page 5, para 4. Reply, annex R/5.

²⁹ Reply, page 5, paras. 23 and 24.

of 12 March 2021, whereby the Applicant’s supervisor was reprimanded, supervising officer tasked with informally resolving the conflict; otherwise, the matter was closed. This decision was not appealed by the Applicant and will not be evaluated by the Tribunal.

30. The second complaint dated 24 November 2021 (“second complaint”), resulted in a report from the Regional Conduct and Discipline section (“RCDS”) dated 9 December 2021 according to which the matter merited a managerial action only. In June 2022, it entailed a reassignment of both the Applicant and her FRO.

31. The fact that the 24 November 2021 submission from the Applicant constituted a formal complaint transpires clearly from the surrounding correspondence: the fact that the first matter had been formally “closed” through a memorandum of 12 March 2021; the email from DMS of 12 November 2021 directing the Applicant - had she wanted to pursue the matter - to file a formal complaint; the resulting email from the Applicant to OiC-RCDS terming her grievance as a “formal complaint”; the fact that it entailed an inquiry and a report; the fact that, as admitted by the Respondent³⁰, it contains new allegations; finally – the fact that it was admitted by the Respondent in the reply³¹, which states “the Applicant raised another formal complaint [...]”. The recent denial by the Respondent³² that the Applicant had raised a second complaint is unmerited in light of the documented facts.

32. The gist of the present application is against an implied decision to not take a corrective action with respect to her complaints of discrimination, harassment, and abuse of authority as per ST/SGB/2019/8, and, specifically, a failure to follow the UNOMS’s recommendation to separate her and her FRO from a supervisory relationship. The latter demand was also clearly articulated in the Applicant’s request for management evaluation dated 27 April 2022. The Tribunal finds that the Applicant

³⁰ Respondent’s response to Order No: 061(NBI/2023), para. 10.

³¹ Reply, para. 13.

³² Respondent’s response to Order No: 061 (NBI/2023), para. 8.

sufficiently identified the implied decision and that there is no basis to claim the untimeliness of the application.

33. So interpreted, however, the application is not receivable for the reasons stated in the management evaluation, namely, that the principal claim against administrative inaction has become moot following the reassignments of both the Applicant and her supervisor. The reassignment decision has created an essentially different factual and legal outcome of the Applicant's complaint under ST/SGB/2019/8, it has been submitted for a timely management evaluation and timely appealed. Whereas the Applicant also claimed compensation for moral damages, she may request this remedy in the case No. UNDT/NBI/2022/108, of which she was informed during the case management discussion. The present proceedings, however, have lost their *raison d'etre*.

JUDGMENT

34. The application is dismissed as not receivable.

35. Documents submitted in the present case are admitted into evidence in case No. UNDT/NBI/2022/108.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 24th day of March 2023

Entered in the Register on this 24th day of March 2023

(Signed)

Eric Muli, Legal Officer, for,

Abena Kwakye-Berko, Registrar, Nairobi