



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

ZHANG

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Jérôme Blanchard, LPAS/UNOG

Introduction

1. The Applicant contests the decision to close her complaint against her First Reporting Officer (“FRO”), namely the Chief, Chinese Translation Section (“CTS”), Languages Service (“LS”), Division of Conference Management (“DCM”), United Nations Office at Geneva (“UNOG”), without further investigation.

Facts

2. In December 2013, the Applicant signed, along with three other staff members, a complaint against the then Chief, CTS, LS, DCM, UNOG. Following an investigation, the former Chief, CTS, LS, DCM, UNOG, resigned and took early retirement in 2015.

3. On 16 February 2021, the Applicant filed a complaint of possible prohibited conduct implicating CTS, UNOG, which was subsequently forwarded to the Office of Internal and Oversight Services (“OIOS”).

4. In accordance with ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority), OIOS referred the complaint to the then Director-General, UNOG, for his attention and appropriate action on 25 March 2021, after its initial assessment.

5. On 9 August 2021, the then Director-General, UNOG, decided to close the Applicant’s complaint of prohibited conduct without further action. The decision stated that it was unlikely that an investigation would reveal sufficient evidence to further pursue the matter as a disciplinary case, as most of the Applicant’s allegations fell in the realm of workplace disagreements over work performance. It was further noted that the Ethics Office is only responsible to determine the existence of *prima facie* cases of retaliation, and that the Applicant’s allegations of retaliation were insufficiently detailed to form the basis of an investigation.

6. On 8 October 2021, the Applicant requested management evaluation of the above 9 August 2021 decision.

7. By letter dated 5 November 2021, the Management Evaluation Unit informed the Applicant that the Under-Secretary-General for Management Strategy, Policy and Compliance decided to uphold the contested decision.

8. On 3 February 2022, the Applicant filed a motion for extension of time to file an application, which was granted until 18 February 2022. Due to issues in her filings, the Tribunal requested the Applicant to refile her application and annexes using the correct form, which was completed on 18 March 2022.

9. The Respondent filed his reply on 4 May 2022.

10. The Applicant filed a series of motions commencing on 7 July 2022 requesting an extension of time to file comments on the Respondent's reply. The Tribunal granted each of the Applicant's motions. However, considering the disposal timeframe of the cases in the Tribunal's docket, by Order No. 103 (GVA/2022) of 7 November 2022, the Tribunal granted the Applicant a final deadline of 5 December 2022 to file her comments.

11. By motion dated 5 December 2022, the Applicant requested a further extension of time for a "reasonable" period as of 12 January 2023 when she was scheduled to return to Switzerland.

12. By Order No. 123 (GVA/2023) of 8 December 2022, the Tribunal rejected the Applicant's motion for a further extension of time.

Consideration

13. The Applicant contests the decision to close her complaint of prohibited conduct against her first reporting officer ("FRO") without further investigation.

14. The Tribunal notes that, on 16 February 2021, the Applicant filed a complaint of possible prohibited conduct implicating the Chief CTS, LS, DCM, UNOG, which was subsequently forwarded to the Office of Internal and Oversight Services ("OIOS").

15. After an initial assessment, OIOS referred the complaint to the then Director-General, UNOG, for his attention and appropriate action. He subsequently decided to close the complaint without further action.

Scope of judicial review

16. Art. 2.1(a) of the Tribunal's Statute confers jurisdiction on the Tribunal to examine the lawfulness of administrative decisions. The administrative decision presently under scrutiny is the decision to close the Applicant's complaint of prohibited conduct under ST/SGB/2008/5 without any further action.

17. The Tribunal reiterates that it is not its role to engage in a *de novo* investigation of the alleged complaint nor to make a determination on its content. This is an exclusive prerogative of the Administration who is better placed to undertake a preliminary assessment of the complaint's content and decide whether there is sufficient material to start an investigation.

18. In fact, in cases of harassment and abuse of authority, the Tribunal is not vested with the authority to conduct a fresh investigation into the initial complaint (*Messinger* 2011-UNAT-123, para. 27). As for any discretionary decision of the Organization, it is not the Tribunal's role to substitute its own judgment for that of the Secretary-General (*Samwidi* 2010-UNAT-084, para. 40).

19. In addition, the instigation of disciplinary charges against a staff member is the privilege of the Organization, and it is not legally possible to compel the Administration to take disciplinary action (*Abboud* 2010-UNAT-100, para. 34, *Benfield-Laporte* 2015-UNAT-505, para. 37, *Oummih* 2015-UNAT-518/Corr.1, para. 31).

20. In the case at hand, the relevant governing legal instruments are ST/SGB/2019/8 and ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process).

21. The decision to close the complaint with no action was made pursuant to sections 5.4 to 5.7 of ST/AI/2017/1, which read as follows:

5.4. The responsible official may enlist the assistance of other staff members in conducting the preliminary assessment and may make further enquiries, including from the person(s) (if any) reporting the unsatisfactory conduct, the subject(s) of the report of unsatisfactory conduct, other staff member(s) and/or third person(s) believed to have relevant information.

5.5. In undertaking the preliminary assessment, the following factors may be considered:

(a) Whether the unsatisfactory conduct is a matter that could amount to misconduct;

(b) Whether the provision of the information of unsatisfactory conduct is made in good faith and is sufficiently detailed that it may form the basis for an investigation;

(c) Whether there is a likelihood that an investigation would reveal sufficient evidence to further pursue the matter as a disciplinary case;

(d) Whether an informal resolution process would be more appropriate in the circumstances;

(e) Any other factor(s) reasonable in the circumstances.

5.6. Upon conclusion of the preliminary assessment, the responsible official shall decide to either:

(a) Initiate an investigation of all or part of the matters raised in the information about unsatisfactory conduct; or

(b) Not initiate an investigation.

5.7. In cases where the responsible official decides not to initiate an investigation, the responsible Official should decide either to close the matter without further action[.]

22. It is incumbent on the Applicant to allege and to prove that her complaint was not handled following the applicable procedures and/or that there was a failure to properly assess relevant and available evidence, which led to a manifestly unreasonable decision.

23. After a careful review of the case file and the evidence before it, the Tribunal has not identified any procedural irregularity committed by OIOS in its preliminary assessment nor any wrongdoing. Instead, the Tribunal finds that the decision to

close the complaint without any further action was well-substantiated and in line with the relevant elements of the case.

24. It was indicated that the Applicant failed to identify specific incidents, that her accusations were vague, that she did not describe a single incident that could amount to prohibited conduct under ST/SGB/2019/8, and that she did not provide any supporting documentation.

25. The Applicant also claimed being victim of retaliation, but there is no evidence that she reached out to the Ethics Office.

26. The Respondent clarified that the Administration reviewed the matter and could not find any causal link between the reported misconduct in December 2013 against the former Chief, CTS, LS, DCM, UNOG (see para. 2 above), and the continuing under-performance issues of the Applicant under a new FRO, for the following reasons:

- a. The complaint was directed against the former Chief CTS, LS, DCM, UNOG, who resigned in 2015 and no allegations were made against the current Chief, CTS, LS, DCM, UNOG;
- b. No apparent link could be made between the former and the current Chief, CTS, LS, DCM, UNOG;
- c. The investigation report into the December 2013 complaint does not mention the name of the Applicant, whose identity was not revealed during the investigation; and
- d. None of the allegations raised in 2013 against the former Chief, CTS, LS, DCM, UNOG, involved the Applicant.

27. The fact that the Administration was able to reasonably substantiate its decision and the lack of evidence in support of the Applicant's allegations render the decision to close her complaint without further action a regular exercise of administrative discretion.

28. Since the Tribunal has not found the contested decision to be unlawful, the Applicant is not entitled to any remedies under art. 10.5 of its Statute.

Conclusion

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

(Signed)

Judge Teresa Bravo

Dated this 31st day of May 2023

Entered in the Register on this 31st day of May 2023

(Signed)

René M. Vargas M., Registrar, Geneva