UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2023/029
Judgment No.: UNDT/2024/048
Date: 9 August 2024
Original: English

Before: Judge Margaret Tibulya

Registry: New York

Registrar: Isaac Endeley

HANNINA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Manuel Calzada

Counsel for Respondent:
Halil Göksan, AS/ALD/OHR, UN Secretariat

Introduction

1. On 2 September 2023, the Applicant, Chief of Mission Support, United Nations Support Mission in Libya ("UNSMIL"), (at the D-1 level), filed an application contesting the decision of the Special Representative of the Secretary-General for Libya and Head of Mission, UNSMIL ("SRSG") to place her on administrative leave with pay ("ALWP"), dated 19 April 2023.

2. On 5 October 2023, the Respondent filed his reply contending that the application is meritless.

3. For the reasons set out below, the application is denied.

Factual and procedural background

4. On 22 April 2022, the Office of Internal Oversight Services ("OIOS") received a complaint from a former staff member with UNSMIL implicating the Applicant in prohibited conduct.

5. On 26 May 2022, OIOS referred the matter to UNSMIL for appropriate action in accordance with the provisions of ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process).

6. On 28 May 2022, the then Acting Head of Mission requested the then Chief of Staff ("COS"), UNSMIL, to refer the case to the Regional Conduct and Discipline Section (RCDS). On 13 June 2022, the then COS referred the case to RCDS.

7. By interoffice memorandum dated 14 October 2022, the Chief, RCDS (C/RCDS), recommended that the SRSG establish a panel to investigate the complaint.

8. On 5 January 2023, the SRSG established the fact-finding panel to investigate the matter.

9. On 27 January 2023, the Chief Human Resources Officer ("CHRO") provided the Applicant with a letter dated 5 January 2023 informing her of the SRSG's decision to appoint a fact-finding panel to investigate the complaint made against her, along with the names of panel members.

10. By email dated 11 April 2023, the C/RCDS wrote to the SRSG recommending placing the Applicant on ALWP.

11. By email dated 20 April 2023, the CHRO transmitted the contested decision to the Applicant.

12. On 23 April 2023, the Applicant filed a request for management evaluation with the Management Evaluation Unit ("MEU").

13. On 6 June 2023, the Under-Secretary-General for the Department of Management Strategy, Policy and Compliance (the "USG/DMSPC") decided to uphold the contested decision (based on the MEU's recommendation).

14. On 1 April 2024, the case was assigned to the undersigned Judge.

15. On 9 April 2024, a case management discussion ("CMD") was held remotely via MS Teams to discuss the case.

16. On 11 June 2024 the Tribunal issued Order No. 065 (NY/2024) directing, *inter alia*, the parties to file closing submissions.

17. On 21 June 2024, the Applicant filed her closing statement.

18. On 28 June 2024, the Respondent filed his closing statement.

19. On 3 July 2024, the Applicant filed her statement of any final observations responding to the Respondent's closing statement.

20. On 3 July 2024, the Respondent filed a motion to strike out the Applicant's final observations on the basis that she failed to comply with Order No. 065 (NY/2024), namely the direction that no new evidence be introduced.

21. On 4 July 2024, the Applicant filed her response to the Respondent's motion submitting that the Respondent's motion be summarily dismissed as lacking in substance. The Applicant stated that her observations dated 3 July 2024 responded to new allegations introduced by the Respondent in his closing submission on 28 June 2024, namely that the Applicant delayed the onboarding of the consultant.

22. The Tribunal has reviewed the Applicant's final observations and finds the submissions to be relevant to the issues in the case. The Respondent's motion to strike out the Applicant's final observations dated 3 July 2024 is therefore denied.

Consideration

Parties' submissions

23. The Applicant's submissions may be summarized as follows:

a. The contested decision is unlawful. The Applicant was placed on ALWP in view of her alleged interference with the issuance of a consultancy contract for a member of the fact-finding panel.

b. The Administration has falsely blamed the Applicant for the delay in the issuance of the panel member's contract in order to justify placing the Applicant on ALWP. This assertion is not supported by the facts of the case.

c. The Applicant did not interfere with or delay the issuance of the consultancy contract for a member of the fact-finding panel. The memorandum to the fact-finding panel of 5 January 2023 (which also identified a panel member who needed a consultancy contract), stipulated that the SRSG expected the fact-finding and reporting to be concluded no later 28 February 2023. Despite this timeline, the documentation related to the consultancy contract,

which was to be prepared by the Office of the Chief of Staff, was only received by the Human Resources Unit ("HR") for processing on 12 March 2023 and for the Applicant's signature on 13 March 2023. The Applicant signed the consultancy form the same day she received it, and the panel member's contract was issued by HR and signed by the panel member on 24 March 2023.

d. Despite the C/RCDS's personal knowledge of the causes of the delay in the issuance of the consultancy contract, which had nothing to do with the Applicant, the C/RCDS recommended to the SRSG the placement of the Applicant on ALWP.

e. In her recommendation letter dated 11 April 2023 to the SRSG, the C/RCDS stated, "The panel's work, including that of the Conduct and Discipline Focal Point, who is responsible for coordinating most of their needs in respect of their administrative requirements, i.e. issuing a contract to one of the panel members, obtaining documents from HR, etc. has faced different levels of unnecessary challenges/delays that has hindered progress in the panel's work". She added, "Sir, the Position of a [Chief of Mission Support] is very powerful and influential in the Mission, therefore, the responsibility of the Subject for the entire support component of the Mission, appears to be posing a potential conflict of interest. It is pertinent to mention that the perceived interreference (sic) and or influence whether directly/indirectly with anything related to the panel appears to create a false perception of impunity that may affect the credibility of the accountability mechanism in the Mission".

f. By letter dated 19 April 2023, the SRSG unlawfully placed the Applicant on ALWP. Furthermore, the SRSG has made subsequent extensions of the ALWP stating that "[i]n consultation with the Regional Conduct and Discipline Section, I have determined that the factors forming the basis for the initial placement on ALWP continue to exist."

g. The Administration has consistently relied on the deliberately false assertion that the Applicant interfered in the issuance of the panel member's consultancy contract to substantiate its decision to place the Applicant on ALWP.

h. Blaming the Applicant for the delay in the issuance of the panel member's contract is not supported by the facts. The assertions "the Applicant waited 10 days to cast doubt on the validity of the consultancy form" and that "despite the SRSG's intervention and signature on the form, the Applicant asked for the form to be completed anew for her approval" are false. The Applicant states that she signed the first consultancy form on the same day she received it, when the revised form was resent to her 10 days later, she requested that the SRSG sign it since he was the only official in the front office with the delegated authority and despite repeated requests by her, he failed to do so for two weeks. The contested decision was unreasonable and ill-motivated because it penalized the Applicant for doing her job, that is, seeking to obtain an authorized signature on the consultancy form that would serve as the basis for authorizing payments to the consultant in compliance with the Organization's rules and procedures.

i. Moreover, the Administration relied on the Applicant's senior managerial position as Chief of Mission Support as an inherent conflict of interest and a potential reputational risk to justify placing the Applicant on ALWP.

j. It is a highly irregular and extreme action to place the Applicant on ALWP since 20 April 2023 on the excuse that her position is powerful and influential and her responsibility for the entire support component of the Mission posed a potential conflict of interest. There is no evidence or incident to suggest the Applicant interfered with or delayed the work of the fact-finding panel nor was there any effort made to mitigate any actual or perceived conflicts of interest, which did not include the detrimental decision to place her on

ALWP. Based on this logic, the United Nations would have to place on administrative leave any senior manager accused of misconduct who is "powerful and influential" lest they too interfere in a fact-finding or investigative process.

k. Moreover, the concern that the Applicant's presence in the Mission could prejudice the interests or reputation of the Organization by virtue of the "powerful and influential" position she holds, was directly connected to the panel's work and potential interference. Since the Applicant was informed on 5 February 2024 that the panel had concluded its work and its report transmitted to the Office of Human Resources, DMSPC for possible disciplinary action, it is no longer possible for the Applicant to intervene in the work of the panel and therefore her presence in the Mission cannot be said to prejudice the interests and reputation of the Organization. Consequently, further extension of the ALWP is unwarranted.

l. The decision to place the Applicant on ALWP has had a detrimental effect on her. Over the last 15 months, the Applicant has endured damage to her professional image and reputation, loss of professional opportunities, reduced career prospects, and harm to her physical and mental health and well-being.

m. A Chief of Mission Support occupies an important position; it is one achieved based on many years of experience, knowledge, and integrity. The placement of a Chief of Misson Support on administrative leave, in the context of allegations of prohibited conduct, has an enduring effect on the image and reputation of the individual. In addition, the Applicant missed out on several professional opportunities, including the CMS Conference, the Management Client Board meeting and others. Her absence at these events was notable, further harming her image and reputation.

n. Finally, the Applicant claims that her due process rights were violated because the contested decision erroneously referred to sections 11.3(c) and (e) of ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process) instead of sections 11.3(b) and (c). She argues that the change represents a fundamental flaw in the decision-making process which renders the decision unlawful.

24. The Respondent's submissions may be summarized as follows:

a. The contested decision is lawful, reasonable and procedurally correct.

b. The SRSG reasonably exercised his authority to place the Applicant on ALWP to protect the work of the fact-finding panel (section 11.3(b) of ST/AI/2017/1) and to avoid any prejudice to the interests and reputation of the Organization (section 11.3(c) of ST/AI/2017/1). In reaching that conclusion, the SRSG considered several factors including: the Applicant's senior managerial role, the circumstances surrounding the delay in issuing a contract to a member of the fact-finding panel, the chilling effect the Applicant's presence would have on the participation of witnesses in the fact-finding panel's interviews, and the risk of a perception of impunity for senior officials affecting the credibility of the Organization's accountability mechanisms.

c. Despite the Applicant's responsibility of routine oversight of consultancy contracts issued by UNSMIL, her actions caused four weeks delay (13 March to 10 April 2023) in the issuance of a contract for one fact-finding panel member.

d. The Applicant first approved the consultancy form for the service of the panel member. She, however, then waited ten days to cast doubt on the validity of that form with the SRSG. She also avoided copying relevant email addresses in her emails to the SRSG, which would have ensured her concerns regarding the form were promptly addressed. Later, despite the SRSG's intervention and

signature on the form, he asked for the form to be completed anew for her approval.

e. After a review of the circumstances in the delay of the issuance of a contract to the panel member, and the recommendation of the Chief, Regional Conduct and Discipline Section noting the delays and the impact of the delays on the panel's work, the SRSG concluded the Applicant posed a risk to the panel's investigation for four reasons.

f. First, the SRSG concluded there was a risk that potential witnesses would be unwilling to meet the fact-finding panel as the Applicant would have been aware of the reason for their travel because movements of personnel are subject to her approval.

g. Second, given the extent of her authority as Chief of Mission Support, the SRSG concluded there was a risk the Applicant might cause further delays to the fact-finding panel's work.

h. Third, the SRSG considered that a delay in the fact-finding panel's work would negatively impact the panel's work. Further delays would have required extending the timeline within which the panel was expected to complete its work and would have affected the panel members' availability as they had committed to serve for a specific time. The unavailability of any panel member would have significantly delayed the completion of the investigation given the challenges of finding an available investigator at the D-1 level, the same level as the Applicant.

i. Lastly, the SRSG considered that the Applicant's continued presence in her senior managerial role carried a risk to the interests and reputation of the Organization. Any perceived interference or direct/indirect influence of the Applicant over anything related to the panel's work was an unacceptable reputational risk.

j. The Applicant's placement on ALWP was procedurally correct. The SRSG provided her with a written statement of the reasons for her placement on ALWP and its initial duration. The decision was reasonable and proportionate. The contested decision was also a proportionate non-punitive measure that balances the Applicant's interests in avoiding financial hardship with ensuring the interests of the Organization in finalising its investigation promptly, ensuring full participation of witnesses, and safeguarding its reputation.

Legal framework

25. The essence of the Applicant's claim is that the Administration unlawfully placed her on ALWP.

26. Regarding ALWP, staff rule 10.4(a) provides as follows (emphasis in the original):

> **Administrative leave pending investigation and the disciplinary process**
>
> (a) A staff member may be placed on administrative leave, under conditions established by the Secretary-General, at any time after an allegation of misconduct and pending the completion of a disciplinary process. Administrative leave may continue until the completion of the disciplinary process.
>
> (b) A staff member placed on administrative leave pursuant to paragraph (a) above shall be given a written statement of the reason(s) for such leave and its probable duration.
>
> […]
>
> (d) Placement on administrative leave shall be without prejudice to the rights of the staff member and shall not constitute a disciplinary measure. […]

27. Sections 11.3(b) and (c) of ST/AI/2017/1 stipulate (emphasis in the original):

> *Administrative leave with pay*
>
> 11.3 The decision to place a staff member on administrative leave with pay may be made by the authorized official at any time following

> a report of suspected unsatisfactory conduct and following the authorized official's determination that at least one of the following circumstances is met:
>
> […]
>
> (b) Continued service by the staff member would create a risk that the staff member could destroy, conceal or otherwise tamper with potential evidence, or interfere in any way with the investigation or disciplinary process, including by retaliating against individuals protected under ST/SGB/2017/2 or intimidating a witness;
>
> (c) The continued presence of the staff member on the Organization's premises or at the duty station could constitute a security or financial risk to the Organization and/or its personnel, or could otherwise prejudice the interests or reputation of the Organization;
>
> (d) The staff member's continued presence at the office could have a negative impact on the preservation of a harmonious work environment;
>
> (e) There is a risk of repetition or continuation of the unsatisfactory conduct.

28. In conducting a judicial review of a decision to place a staff member on ALWP, the Dispute Tribunal reviews whether the decision was lawful and rational, considering the criteria stipulated in the staff rules and relevant sections of ST/AI/2017/1 and the information before the Administration at the time of the decision (see *Sanwidi* 2010-UNAT-084, paras. 40-42).

29. The Tribunal will not substitute its view for the Administration's decision but will evaluate whether that decision was irrational or arbitrary (see *Gisage* 2019-UNAT-973, paras. 37-40; *Millan* 2023-UNAT-1330, paras. 107-110). As a general principle, the Dispute Tribunal does not lightly interfere with the exercise of managerial discretion (see *Jafari* 2019-UNAT-927). It is well-established that it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General or the official with delegated authority amongst the various courses of action open to them (see *Sanwidi* 2010-UNAT-084, para. 40, and *Belkhabbaz* 2018-UNAT-873, para. 66)).

30. In *Jafari*, the Appeals Tribunal recalled that the discretionary power of the Administration is not unfettered. The Administration has an obligation to act in good faith and comply with applicable laws. Mutual trust and confidence between the employer and the employee are implied in every contract of employment. Both parties must act reasonably and in good faith (see para. 31).

Discussion

Was the decision to place the Applicant on ALWP lawful?

31. By way of relevant background, the Tribunal notes that the Applicant serves as Chief of Mission Support at the D-1 level with UNSMIL. By letter dated 5 January 2023, she was informed by the SRSG that he had decided to appoint the fact-finding panel to investigate allegations of harassment and abuse of authority made against her by a former staff member with UNSMIL. As the Chief of Mission Support, it was also part of the Applicant's role to have oversight of consultancy contracts issued by UNSMIL, including the issuance of the contract for one panel member in the case of the allegations of misconduct made against the Applicant herself.

32. The Applicant was placed on ALWP on 20 April 2023 for allegedly delaying the formation of the fact-finding panel into allegations against her by delaying the issuance of one panel member's consultancy contract. Specifically, it was alleged that the work of the fact-finding panel faced challenges and delays in relation to the support provided by the Mission Support headed by the Applicant.

33. The Respondent states that as Chief of Mission Support, the Applicant is responsible for the routine oversight of consultancy contracts issued by UNSMIL. Despite the routine nature of such contracts, the contract of one panel member was delayed for four weeks (13 March to 10 April 2023). The circumstances indicated that despite the urgency of the contract, the Applicant used her knowledge of: (i) the panel and its work; (ii) the staffing challenges within the Office of the Chief of Staff (OCOS); as well as (iii) "budget and other HR subdelegation" to delay the issuance of the contract.

34. In particular, the Respondent submits that the Applicant's continued service in her senior managerial role as CMS created delay, and a risk of further delay in the completion of the panel's work. The Respondent states that the Applicant's continued service also would create an unacceptable reputational risk to the Organization. The Respondent states that the Applicant's seniority, the circumstances surrounding the delay in the issuance of a contract to a panel member, the chilling effect the Applicant's presence would have on the participation of witnesses, and the risk of a perception of impunity for senior officials affecting the credibility of the Organization's accountability mechanisms were the other determining factors in making the contested decision.

35. The Applicant, on the other hand, argues that her placement on ALWP was improperly motivated, arbitrary, unjustified, procedurally flawed, and therefore unlawful. She states that the Respondent's assertions constitute a complete mischaracterization of her actions. She submits that the assertion that she caused a delay in the issuance of the consultancy contract is not supported by the facts.

36. The Applicant further contends that she did share her concerns about protecting the integrity of the fact-finding panel process directly with the Chief of RCDS. She states that her raising concerns did not delay the process. She argues that her concerns were legitimate and verifiable, and made in the interest of protecting the integrity of the investigation process.

37. The Tribunal is not convinced by the Applicant's arguments that her actions in regard to the fact-finding panel did not cause delay or were in themselves justified. The case record indicates that she, for example, raised an objection to providing a list of witnesses to the Conduct and Discipline Focal Point, UNSMIL which required the C/RCDS to intervene and recommend an alternative method in order to accommodate her, which caused a delay to the coordination of information requirements. The record also indicates that one of the panel members, a former staff member, needed a consultancy agreement in order to carry out her role, but that, as submitted by the Respondent, the Applicant indeed delayed the issuance of the consultancy contract and

in so doing delayed the work of the panel. In particular, the Applicant first approved the consultancy form for the service of the panel member and then waited 10 days to cast doubt on the same form with the SRSG. The record also establishes that the Applicant avoided copying relevant email addresses in her emails to the SRSG, which would have ensured her concerns with respect to the consultancy form would be addressed promptly. Also, that later, despite the SRSG's intervention and signature on the consultancy form, the Applicant again requested an updated version for her approval.

38. The Tribunal notes that the Applicant does not dispute that she raised concerns in regard to providing a list of witnesses to the UNSMIL Conduct and Discipline Focal Point. She does not dispute the assertion that she avoided copying relevant email addresses in her emails to the SRSG which would have ensured her concerns with respect to the form would be addressed promptly. Nor does she deny that despite the SRSG's intervention and signature on the consultancy form, she again requested an updated version for her approval.

39. The Applicant argues that delays in the fact-finding panel's work were caused by others such as the Office of the Chief of Staff. There may well have been other causes of delay affecting the fact-finding panel's work. However, the record establishes that the Applicant's own conduct did indeed contribute to causing delay.

40. The Tribunal notes that the Applicant as Chief of Mission Support was placed in a suboptimal position that required her to assist with the administration of the fact-finding panel in the case of the investigation of misconduct against herself. In such circumstances, where there is bound to be a perceived conflict of interest the Organization should manage the situation more skillfully to avoid such a conflict arising. The Applicant's participation in the investigation in any manner was therefore problematic *ab initio*. However, as noted above, her own actions in objecting to or delaying the investigation process did create reasonable perceptions of interference and/or influence. The Tribunal therefore finds that the SRSG reasonably exercised his

discretion when he placed the Applicant on AWLP to, *inter alia*, protect the credibility of the accountability mechanism.

41. In addition, the Tribunal agrees with the Respondent that the Applicant's position of power and influence in the Mission posed a potential conflict of interest and that she was in a position to interfere, covertly or overtly, with the work of the panel which would have created a perception of impunity that could affect the credibility of the accountability mechanism in the United Nations.

42. In light of the above, the Tribunal finds that the decision to place the Applicant on ALWP was lawful, reasonable and proportionate, and that the SRSG reasonably exercised his authority to protect the work of the fact-finding panel (pursuant to sec. 11.3(b) of ST/AI/2017/1) and to avoid any prejudice to the interests and reputation of the Organization (pursuant to sec. 11.3(c) of ST/AI/2017/1).

Were the Applicant's due process rights respected?

43. The Applicant claims that her due process rights were violated because the contested decision erroneously referred to sections 11.3(c) and (e) of ST/AI/2017/1 instead of sections 11.3(b) and (c). She argues that the change represents a fundamental flaw in the decision-making process which renders the decision unlawful.

44. The Respondent states that erroneous reference to sections 11.3(c) and (e) of ST/AI/2017/1 instead of sections 11.3(b) and (c) was a harmless clerical error as evident from the C/RCDS's recommendation to the SRSG, in which she referred only sections 11.3(b) and (c) of ST/AI/2017/1. Furthermore, the Respondent points out that the text of the contested decision spelt out its reasoning, namely protecting the panel's work and avoiding any prejudice to the interests and reputation of the Organization.

45. The Tribunal notes that the C/RCDS's recommendation to the SRSG (which formed the basis of the decision) indeed only referred to sections 11.3(b) and (c) of ST/AI/2017/1, and that the text of the contested decision spelt out that the decision was necessary for the protection of the panel's work and avoiding any prejudice to the

interests and reputation of the Organization. Based on the foregoing, the Tribunal accepts the Respondent's explanation that the change complained about was a clerical error, which, in any event did not fundamentally prejudice the Applicant.

46. The Applicant states that she was informed on 5 February 2024 that the fact-finding panel had concluded its work and that its report had been transmitted to OHR/DMSPC for possible disciplinary action. She submits that it is no longer possible for her to intervene in the work of the panel and therefore her presence in the Mission cannot be said to prejudice the interests and reputation of the Organization. Consequently, she argues that further extension of the ALWP is unwarranted.

47. The Tribunal notes that the letter dated 19 April 2023 from the SRSG, UNSMIL to the Applicant placing her on ALWP, indicated that in order to protect the work of the fact-finding panel, he had determined to place the Applicant on ALWP for "an initial period of three months, or until completion of any disciplinary process, whichever is earlier". The record indicates that the disciplinary process is not yet complete. The Applicant submits herself that she was informed that the fact-finding panel had concluded its work and its report transmitted to OHR/DMSPC for possible disciplinary action. It follows that the basis for the Organization's initial decision to place the Applicant on ALWP remains valid.

48. As a final note, in her application, the Applicant made an assertion, without proof, that the previous Head of Mission of UNSMIL had assessed that the allegations of misconduct against her and decided not to initiate an investigation against her and to close the matter without further action. The Applicant submits that "[t]he new management team, without consulting the old management team, and without any knowledge of the history of the complainant, discovered the complaint filed in April 2022, and opened the matter for fact-finding. The [A]pplicant is therefore being subjected to double jeopardy". The Tribunal finds that this claim is not supported by evidence and is without merit. The fact that the new management team re-opened the matter for fact-finding, resulting in the Applicant being placed on AWLP does not represent double jeopardy in the absence of proof that the previous management indeed

made a decision to abandon the complaint. This argument must therefore fail for lack of merit.

49. At this juncture, it is important for the Tribunal to emphasize that ALWP is a non-punitive, non-disciplinary and purely administrative measure. The measure is not permanent but temporary or limited in nature, even if the duration can be extended, as it has been in the Applicant's case. The Applicant continues to receive her salary and is therefore not financially prejudiced by the decision to place her on ALWP.

50. The whole matrix of evidence supports a conclusion that the Applicant's due process rights were respected. Indeed, save for the complaint about the change in the legal basis for the decision, the Applicant did not raise any other due process related challenges. In this regard, the Tribunal notes that the SRSG, who had delegated authority as head of entity to make the contested decision, provided the Applicant with a written statement of the reasons for her placement on ALWP and its initial duration in keeping with staff rule 10.4(b). The Applicant's placement on ALWP was therefore procedurally correct.

51. Conclusively, the Applicant has failed to discharge the burden of establishing that the contested decision was arbitrary or capricious, motivated by prejudice or other extraneous factors, or was flawed by procedural irregularity or error of law.

52. **Conclusion**

53. The contested decision is lawful. The application is dismissed for lack of merit.

(Signed)

Judge Margaret Tibulya
Dated this 9th day of August 2024

Entered in the Register on this 9th day of August 2024

(Signed)

Isaac Endeley, Registrar, New York