



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2024/010  
Judgment No.: UNDT/2025/044  
Date: 3 July 2025  
Original: English

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**Before:** Judge Francis Belle

**Registry:** New York

**Registrar:** Isaac Endeley

JEDIAN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON RECEIVABILITY**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Tamal Mandal, AS/ALD/OHR, UN Secretariat

## **Introduction**

1. The Applicant is a staff member with the United Nations Mission for the Referendum in Western Sahara (“MINURSO”). On 4 March 2024, he filed an application contesting the decision of the Office of Internal Oversight Services (“OIOS”) to not pursue an investigation into a complaint he had filed.
2. On 8 April 2024, the Respondent filed a reply in which he contends that the application is not receivable and that, in any event, “it lacks merit”.
3. For the reasons set out below, the Tribunal rejects the application.

## **Facts**

4. On 2 February 2021, OIOS received a complaint of prohibited conduct at MINURSO implicating the Applicant. The complaint, filed by [“AZF” (name redacted for privacy reasons)], a colleague of the Applicant’s at MINURSO, alleged that the Applicant made disparaging comments about AZF’s home country and its officials, and created a hostile work environment by criticizing AZF’s work.
5. The Applicant is a Head of Office, at the D-1 level, while AZF is a Field Security Officer in the same duty station.
6. OIOS recorded the complaint under ID Case No. 0103/21 and on 6 June 2021, it interviewed AZF as part of the investigation into the complaint.
7. On 12 July 2021, the Applicant filed with OIOS a complaint of possible prohibited conduct implicating AZF. He reported that AZF was “committing a scam through fabricating false allegations and trying to convince others to provide false witness statements against” him. The Applicant also accused AZF of displaying “hatred and discrimination” towards him based on his nationality, of showing disrespect towards the Applicant’s country, and of “making fun” of the former President of the Applicant’s country. He stated that AZF had attempted to “sabotage MINURSO operations” by working to convince its international staff not to return to work at their duty station during the COVID-19 pandemic. The

Applicant further asserted in the complaint that some of these incidents occurred while he and AZF were “talking together and drinking”.

8. OIOS acknowledged receipt of the Applicant’s complaint on the same date, 12 July 2021.

9. On 27 July 2021, OIOS recorded the Applicant’s complaint under ID Case No. 0784/21.

10. On 29 July 2021, OIOS prepared a note for the file indicating the AFZ’s complaint and the Applicant’s cross-complaint should be merged into a single case and assessed together since they involved the same parties.

11. On 3 September 2021, OIOS interviewed the Applicant and asked him questions relating to both complaints.

12. On 1 October 2021, the Applicant sent OIOS a written statement and supporting documents including his list of witnesses.

13. On 4 July 2022, the Applicant wrote to OIOS to enquire about the status of his complaint.

14. OIOS replied on 7 July 2022 informing the Applicant that the investigation into his complaint was ongoing and that he would be “informed about the outcome in due course”.

15. On 27 July 2022, the Applicant again wrote to OIOS and asked about the status of his case.

16. OIOS responded on the same day assuring the Applicant that “the matter [was] under investigation”.

17. On 19 September 2023, OIOS sent the Applicant a letter informing him of the closure of Case No. 0103/21 filed by AZF as the evidence did not substantiate the alleged misconduct by the Applicant.

18. On 21 September 2023, the Applicant responded to the OIOS email and enquired about the status of his own complaint against AZF.

19. On 28 September 2023, OIOS sent the Applicant a memorandum advising him that it had completed its assessment and had “decided to take no further action” on his complaint, as there were insufficient grounds to indicate that AZF had made false allegations against him. OIOS also noted that there were insufficient grounds to open an investigation into the Applicant’s complaint that AZF made inappropriate comments relating to the Applicant’s country of nationality or that AZF inappropriately tried to convince personnel not to return to the duty station in the context of the COVID-19 pandemic. Finally, OIOS informed the Applicant that his complaint had been considered as part of the investigation into AZF’s complaint against him.

20. On 26 October 2023, the Applicant requested management evaluation of the OIOS decision and on 6 December 2023, he received a response upholding the contested decision.

### **The Parties’ submissions**

21. The Applicant’s main submissions may be summarized as follows:

- a. OIOS completely “ignored” the Applicant’s complaint against AZF. “The simple fact that [OIOS] did not even bother to give [the Applicant’s] complaint a case number is very significant”. This shows that OIOS “did not consider that it was a real complaint and did not bother to examine it at all”. “This also clearly shows OIOS partiality”.
- b. There are some “clear contradictions” between the OIOS letter to the Applicant dated 19 September 2023 and the second memorandum sent to the Applicant on 28 September 2023. For example, the first letter deals “exclusively” with AZF’s complaint against the Applicant and does not mention the Applicant’s complaint against AZF, while the second letter wrongly claims that the Applicant had reported that AZF had “made a false complaint” against him.
- c. Contrary to what was stated in the 28 September 2023 memorandum, the Applicant had “provided enough evidence to prove that

[AZF] made inappropriate comments relating to [the Applicant's] country of nationality, made fun of [the Applicant's] President and distributed materials [...] calling for violence against [the Applicant's] country”.

d. OIOS also failed to interview the Applicant's witnesses regarding the allegation that AZF had tried to convince staff members not to return to work at the duty station during the COVID-19 pandemic. Even when OIOS investigators interviewed the Applicant on 3 September 2021 about AZF's complaint, they did not ask him at all about his own complaint against AZF.

e. Another “clear contradiction” is that OIOS claims that it disregarded the Applicant's complaint because there was insufficient evidence to warrant an investigation and yet at the same time OIOS claims it has investigated the Applicant's complaint within the investigation into AZF's complaint and rejected it. It is clear that the two complaints “are not the same and cannot be investigated as a sole and unique complaint”. AZF's complaint against the Applicant was related to “political issues” while the Applicant's complaint alleged “racist, discriminatory, and defamatory” conduct by AZF.

f. As OIOS failed to register the Applicant's complaint, to give it a filing number, or to investigate it and come to a fair and independent conclusion, the Applicant prays the Tribunal to grant him “fair and appropriate damages”.

g. In his rejoinder and his closing statement, the Applicant submits that it would not have been possible for OIOS to merge his complaint with AZF's as they were filed at different times and under different circumstances. He also asserts that the Respondent's reply makes contradictory submissions by claiming, on the one hand, that OIOS had rejected the Applicant's complaint as groundless and, on the other hand, that OIOS did not reject the Applicant's complaint but rather merged it with AZF's.

22. The Respondent's main contentions may be summarized as follows:

a. The application is “not receivable *ratione materiae*” since “[t]he contested decision is not a reviewable administrative decision because it does not produce direct legal consequences on the Applicant's terms of appointment”. The Appeals Tribunal has held that a decision to not investigate allegations of misconduct is not a reviewable administrative decision because it does not produce direct legal consequences on a staff member's rights under a contract of employment. The Applicant's speculation that “it is only by an independent examination” that he could have his reputation cleared and be entitled to damages is an “insufficient basis” to conclude that the contested decision had a direct adverse impact such as to be in non-compliance with his terms of appointment or contract of employment.

b. “The Organization has a degree of discretion regarding how to conduct an assessment of a complaint of prohibited conduct and whether to undertake an investigation regarding all or some of the allegations”. Only in a case of “serious and reasonable accusation” does a staff member have a right to an investigation against another staff member which may be subject to judicial review. A fact-finding investigation may only be undertaken if there are sufficient grounds, or if there is reason to believe that a staff member has engaged in unsatisfactory conduct.

c. The contested decision was a lawful exercise of OIOS's operational independence and discretionary authority under ST/SGB/2002/7 (Organization of the Office of Internal Oversight Services) and ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process). “Under Section 5.1 of ST/AI/2017/1, OIOS retains the ‘ultimate authority’ to decide which cases it will consider” and to determine whether any information of unsatisfactory conduct it receives merits any action. Under sec. 5.5 of ST/AI/2017/1, in conducting a preliminary assessment of a report of unsatisfactory conduct, OIOS may consider a wide range of factors before deciding how to proceed with a case.

d. “OIOS lawfully exercised its discretion” and reasonably concluded that the Applicant’s allegations pertaining to AFZ “could not amount to misconduct and that there was insufficient evidence to further pursue the matter as a disciplinary case”. In reaching this conclusion, “OIOS considered each of the allegations in the Applicant’s complaint” as well as the entirety of the available information, including the Applicant’s interview with the investigators.

e. “The Applicant has no right to any remedy. The contested decision was lawful and made in compliance with the legal and regulatory framework”. The Applicant has demonstrated “no procedural or substantive breach of his rights or administrative wrongdoing needing repair”. “Compensation cannot be awarded when no illegality has been established”. Accordingly, the application should be dismissed.

## **Considerations**

### *Receivability*

23. The Applicant contests the decision by OIOS to not pursue an investigation into a complaint he had filed against another staff member, AZF. A careful review of the contested decision, contained in a memorandum dated 28 September 2023 from OIOS, reveals that the Applicant’s report was essentially a counter-complaint against AZF, who had previously filed a complaint against him.

24. In an earlier memorandum dated 19 September 2023, OIOS had informed the Applicant that the investigation into AZF’s complaint against him was complete and that “OIOS ha[d] decided to take no further action on it” as “the evidence did not support the reported misconduct”.

25. In the memorandum dated 28 September 2023 regarding the Applicant’s complaint, it is stated that “OIOS found insufficient grounds to indicate that [AZF] made a false allegation against [the Applicant]”. It is further stated that “[t]here were also insufficient grounds to open an investigation into [the Applicant’s] complaint that [AZF] made inappropriate comments relating to [the Applicant’s]

country of nationality or that [AZF] inappropriately tried to convince personnel not to return to the duty station, in the context of the Covid-19 pandemic”. The decision by OIOS was based on the provisions of secs. 5.1 and 5.5 of ST/AI.2017/1.

26. The Tribunal recalls that pursuant to sec. 5.1 of ST/AI/2017/1, OIOS retains the ultimate authority to decide which cases it will consider and shall determine whether the information of unsatisfactory conduct received merits any action, and if so, is better handled by the responsible official or by OIOS. Additionally, OIOS has full operational independence and broad discretion in determining which complaints to investigate. As the Appeals Tribunal has confirmed, the Administration has a degree of discretion as to how to conduct a review and assessment of a complaint and whether to undertake an investigation regarding all or some of the allegations. (See, for instance, *Nadeau* 2017-UNAT-733/Corr.1, para. 33, and *Benfield-Laporte* 2015-UNAT-505, para. 37). However, this discretion is not unfettered and may be subject to judicial review under art. 2.1(a) of the Statute of the Dispute Tribunal (*Nwuke* 2010-UNAT-099, para. 40).

27. Moreover, sec. 5.5 of ST/AI/2017/1 provides that in undertaking the preliminary assessment, OIOS shall consider whether the unsatisfactory conduct is a matter that could amount to misconduct; whether the complaint regarding unsatisfactory conduct is made in good faith and is sufficiently detailed that it may form the basis for an investigation; whether it is likely that an investigation would reveal sufficient evidence to further pursue the matter as a disciplinary case; whether an informal resolution process would be more appropriate in the circumstances of the case; and any other factors that appear reasonable in the circumstances. It is apparent from the memoranda of 19 September 2023 and 28 September 2023 that in reviewing the Applicant’s complaint, OIOS complied with the procedures set out in ST/AI/2017/1.

28. Pursuant to the established jurisprudence of the Appeals Tribunal, the Dispute Tribunal has the authority to satisfy itself that an application is receivable under art. 8 of its Statute (see, for instance, *O’Neill* 2011-UNAT-182, para. 31, as affirmed in *AAX* 2024-UNAT-1504, para. 47). Further, a determination on receivability must be made without regard to the merits of the case (see, for



instance, the Appeals Tribunal in *Gehr* 2013-UNAT-313; *Christensen* 2013-UNAT-335; *Cooke* 2013-UNAT-380; *Lee* 2014-UNAT-481).

29. It is well-settled that before an administrative decision can be contested and held to be in non-compliance with the contract of employment of a staff member, it must be shown to adversely affect the rights or expectations of the staff member and have direct legal effect (see *Alvear* 2024-UNAT-1464, para. 39). In *O'Brien* 2023-UNAT-1313, the Appeals Tribunal held that a decision to not investigate allegations of misconduct is not a reviewable administrative decision because it does not produce any direct legal consequences on a staff member's rights under a contract of employment. As the Appeals Tribunal explained in *O'Brien* at para. 30 (internal footnotes omitted),

Before an administrative decision can be held to be in non-compliance with the contract of employment of a staff member, it must be shown to adversely affect the rights or expectations of the staff member and have a direct legal effect. The impact or consequences of a disputed decision must be based on objective elements that both parties can accurately determine. Speculation about potential future possible consequences for a staff member's employment record or his reputation is an insufficient basis to conclude that a decision has had (not "may have") a direct and adverse impact such as to be "in non-compliance with the terms of appointment or contract of employment" as contemplated in Article 2(1)(a) of the UNDT Statute. There is no evidence that the refusal to review the investigation had any adverse impact on Mr. O'Brien.

30. Under art. 2.1(a) of the Statute of the Dispute Tribunal, an applicant bears the burden of establishing "that the administrative decision in issue was in non-compliance with the terms of his or her appointment or contract of employment. Such a burden cannot be met where the Applicant fails to identify an administrative decision capable of being reviewed, that is, a specific decision which has a direct and adverse impact on the Applicant's contractual rights" (*Farzin* 2019- UNAT-917, para. 36).

31. In the present case, the Applicant has provided no evidence that the refusal by OIOS to further investigate his complaint had any adverse impact on him. He has not discharged the burden of showing that the contested decision produced any direct legal consequences on his rights under his contract of employment or his

terms of appointment. The Tribunal therefore concludes that the contested decision is not a reviewable administrative decision within the meaning of arts. 2.1(a) and 8.1(a) of the Statute of the Dispute Tribunal as it had no direct effect on the Applicant, had no external legal effect, and did not adversely affect the Applicant's contractual employment rights. Accordingly, the Tribunal finds that the application is not receivable *ratione materiae*.

*Applicant's motion for production of documents*

32. On 11 June 2024, the Applicant filed a motion requesting the Tribunal to order the Respondent to produce certain documents.

33. In light of the finding that the application is not receivable, the Tribunal denies the motion.

**Conclusion**

34. The application is rejected as not receivable.

*(Signed)*

Judge Francis Belle

Dated this 3<sup>rd</sup> day of July 2025

Entered in the Register on this 3<sup>rd</sup> day of July 2025

*(Signed)*

Isaac Endeley, Registrar, New York