



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2024/052
Judgment No.: UNDT/2025/103
Date: 3 December 2025
Original: English

Before: Judge Francis Belle

Registry: New York

Registrar: Isaac Endeley

JEDIAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Jason Biafore, OSLA

Counsel for Respondent:

Halil Göksan, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant is a Principal Political Affairs Officer and Head of Office with the United Nations Mission for the Referendum in Western Sahara (“MINURSO”) based in Tindouf, Algeria. On 22 December 2024, he filed an application contesting the decisions of the Office of Internal Oversight Services (“OIOS”) not to investigate his two reports of possible prohibited conduct implicating a Political Affairs Officer (“the PAO”) at MINURSO.
2. The Respondent filed his reply on 27 January 2025 challenging the receivability of the application.
3. Pursuant to the Tribunal’s Order No. 032 (NY/2025) dated 18 March 2025, the Applicant filed a rejoinder to the Respondent’s reply on 2 April 2025.
4. In accordance with Order No. 067 (NY/2025) of 11 August 2025, the Tribunal held a case management discussion (“CMD”) with the parties on 13 August 2025 at which, *inter alia*, it encouraged the Applicant to seek the assistance of counsel.
5. Following the appointment of Counsel for the Applicant, the parties filed their respective closing statements on 26 September 2025.
6. For the reasons set out below, the Tribunal rejects the application.

Facts

7. The following facts are drawn from the various submissions filed by the parties:
8. On 25 October 2019, the Applicant and the PAO attended a “trivia social evening” that was organized for personnel from MINURSO, other United Nations entities and various international organizations in Tindouf. Participants in the trivia contest were grouped into small teams. The Applicant was in one of the participating teams and the PAO acted as the Quiz Master for the evening.

9. When the Quiz Master posed a trivia question, the members of each team would confer with each other and write down their answer on a sheet of paper. At the end of the evening, the answer sheets were collected. Using an overhead projector, the PAO, acting as Quiz Master, then presented the correct answer to each question and prizes were awarded to the winning teams.

10. One of the trivia questions required participants to state the origin of the word “abracadabra”. The Applicant’s team answered that the word originated from the Persian language. However, the answer presented by the PAO on the overhead projector showed the Hebrew language as the correct answer. The Applicant then googled the word “abracadabra” using his mobile phone and found that one of the first answers was that the origin is from the Aramaic language.

11. An argument ensued as to the correct answer to the question, primarily between the Applicant and the PAO. This was witnessed by many of those participating in the trivia contest.

12. On 4 November 2019, OIOS received a report from the PAO alleging that the Applicant shouted at him and accused him of perpetrating “cultural propaganda” during the trivia evening by declaring that the word “abracadabra” originated from the Hebrew language. OIOS recorded the PAO’s report under Case No. 1200/19.

13. On 4 February 2020, OIOS interviewed the Applicant. On 21 February 2020, the Applicant provided OIOS with a supplementary statement with further information regarding his account of events during the trivia evening. The Applicant stated that: (a) the PAO’s complaint against him was malicious, racist, and discriminatory; (b) it was actually the PAO who shouted at the Applicant; and (c) the PAO “tried to organize a staff mutiny” against the Applicant.

14. On 22 June 2020, OIOS completed its investigation and referred the trivia case to the Office of Human Resources (“OHR”) for appropriate action along with the investigation report and supporting documents. OIOS found that the Applicant failed to act as a role model for his Office, particularly given his position as Principal Political Affairs Officer at the D-1 level.

15. On 9 September 2020, the Applicant submitted a complaint to OIOS implicating the PAO in “racial and ethnic discrimination” in relation to the PAO’s conduct towards him during the trivia evening. OIOS recorded this report under Case No. 0869/20.

16. As stated in the management evaluation response and in the Respondent’s reply, OIOS closed Case No. 0869/20 on 25 September 2020 but did not inform the Applicant. OIOS found that the Applicant’s complaint: (a) was a reproduction of his 21 February 2020 supplementary statement which OIOS had assessed and considered as part of the investigation for the trivia case; (b) contained no new information warranting further action; and (c) was instead a rebuttal of the PAO’s 4 November 2019 allegations against the Applicant.

17. On 15 October 2020, the Applicant submitted another complaint to OIOS implicating the PAO for: (a) filing a malicious complaint against the Applicant; (b) organizing a “plot” to present false statements against the Applicant; (c) shouting at the Applicant; and (d) encouraging a “staff mutiny” against the Applicant. OIOS recorded this report under Case No. 1011/20.

18. As noted in the management evaluation response and in the Respondent’s reply, OIOS closed Case No. 1011/20 on 25 October 2020 but did not inform the Applicant. OIOS found that: (a) this second complaint was another version of the Applicant’s 21 February 2020 supplementary statement; (b) the Applicant repeated and expanded on earlier comments, arguments and allegations made in his 21 February 2020 supplementary statement; (c) the complaint introduced no new information that would warrant further action; and (d) the complaint was instead a rebuttal of the PAO’s 4 November 2019 allegations against the Applicant.

19. By memorandum dated 31 August 2021, in relation to the PAO’s 4 November 2019 report of possible misconduct implicating the Applicant and the 22 June 2020 OIOS investigation report, the Assistant Secretary-General for Human Resources (“the ASG/OHR”) requested the Applicant’s comments regarding the trivia evening and its aftermath, and the Applicant provided his comments on 15 November 2021.

20. On 7 April 2022, the ASG/OHR concluded that the Applicant's involvement in the events of the trivia evening "did not constitute misconduct" and that "initiating a disciplinary process regarding this matter [was] not warranted". Accordingly, the matter was closed.

21. Upon the Applicant's inquiries about his 9 September 2020 and 15 October 2020 complaints, on 6 July 2024, OIOS informed him of the closure of both matters on 25 September 2020 and 25 October 2020, respectively.

22. On 4 September 2024, the Applicant filed a request for management evaluation against the OIOS decisions not to investigate his two reports of possible prohibited conduct implicating the PAO. These are the contested decisions in this case.

23. On 4 October 2024, the Under-Secretary-General for Management Strategy, Policy, and Compliance upheld the contested decisions, and on 22 December 2024, the Applicant filed the present application.

Considerations

Receivability

24. The Respondent submits that the contested decisions "are not reviewable administrative decisions because they do not produce direct legal consequences on the Applicant's terms of appointment". He asserts that "a decision not to investigate misconduct allegations is not a reviewable administrative decision" because it "does not directly affect a staff member, does not have an external effect, and does not directly or adversely impact a staff member's contractual employment rights". He also states that a staff member's speculation about his reputation is an insufficient basis to conclude that a contested 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".

25. The Respondent further submits that the Applicant's speculation that his reputation can be cleared only by an OIOS investigation into his complaints and

that this “cannot be done simply by the rejection of the complaint filed by [the PAO]” is an insufficient basis to conclude that the contested decisions had a direct and adverse impact such as to be in non-compliance with the Applicant’s terms of appointment.

26. On his part, the Applicant asserts in his rejoinder that the Respondent’s claim that the application is not receivable is “gross nonsense” because the Applicant is “a victim of the violation of one of the most basic human rights”. He states that this “violation” by the PAO “calls for direct legal consequences” and that “the existence of these direct legal consequences was clearly confirmed by the launching of the investigation” into the PAO’s report implicating the Applicant.

27. The Applicant further submits in his closing statement that the “decision by OIOS not to take up investigation of his good faith complaints was unlawful, based in an abuse of discretion, and violated his rights to be treated fairly, justly and transparently, with the result that he has suffered reputational harm and discrimination on the basis of his ethnic origin”. Additionally, the Applicant asserts that “his terms and conditions of appointment have been negatively affected by OIOS’ decision not to take up his good faith complaint, and that this matter is thus in all respects receivable”. Moreover, “the specific reputational harm claimed and suffered by the Applicant is rooted in the rumour, suspicion and innuendo so common to the insular and confining environment of peace-keeping missions”.

28. In the Applicant’s view, by investigating the PAO’s complaint in full but “choosing instead to discount the Applicant’s complaint entirely as a mere ‘rebuttal’”, OIOS allowed the PAO “to use the disciplinary complaint process as a ‘sword’ to do reputational and moral harm to the Applicant, and not as a ‘shield’ as it is intended, for protection of staff and promotion of good faith reporting of actual perceived misconduct. Thus, OIOS’ failure to investigate the Applicant’s complaint resulted in an abuse of process that cannot be countenanced by [the Tribunal] as to do so would result in a perversion of the misconduct reporting process and create a dangerous precedent where unscrupulous staff members are encouraged to file bad faith complaints of misconduct only to harm those toward whom they harbour ill will”.

29. The Tribunal recalls that under arts. 2(1)(a) and 8(1)(a) of the Dispute Tribunal's Statute, the Tribunal is competent to hear and pass judgment on an application to appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. Moreover, the Appeals Tribunal has consistently held that a decision is reviewable if it produces direct legal consequences for the terms of appointment or employment of the staff member (see, for instance, *Reilly* 2022-UNAT-1309, para. 76; *Nouinou* 2019-UNAT-902; *Michaud* 2017-UNAT-761; *Lee* 2014-UNAT-481). The jurisprudence of the Appeals Tribunal has further clarified that the Organization has a degree of discretion regarding how to conduct a review and assessment of a complaint of prohibited conduct (see, for instance, *Oummih* 2015-UNAT-518/Corr.1 and *Benfield-Laporte* 2015-UNAT-505).

30. Having carefully considered the parties' submissions on receivability, the Tribunal notes that there are several parallels between the present case and the Appeals Tribunal's judgment in *O'Brien* 2023-UNAT-1313. In both cases, following an initial report of possible misconduct implicating the Applicant or the Appellant, the investigative body recommended that disciplinary action should be taken against him, on the basis that the allegations had been substantiated. However, the Administration decided not to pursue disciplinary charges or to impose a disciplinary measure on the Applicant or the Appellant. In the present case, the subsequent decisions not to conduct investigations into the Applicant's own reports of possible misconduct became the contested administrative decisions. In *O'Brien*, the contested decision was the refusal to launch an independent review of the investigation that had concluded that the allegations against the Appellant were substantiated.

31. In *O'Brien*, the Appeals Tribunal held that a decision not to investigate allegations of misconduct is not a reviewable administrative decision because it does not have direct effect on a staff member, does not have external legal effect, and does not directly or adversely impact a staff member's contractual employment rights. A decision is subject to judicial review if it is of an administrative nature, adversely affects the contractual rights of a staff member and has a direct, external legal effect. As the Appeals Tribunal further noted, the refusal of the Appellant's

request to launch an investigation of staff members “who he alleged had planned a ‘malicious’ complaint [...] against him, did not constitute an administrative decision because it too lacked direct effect. Any challenge to it would have been not receivable also because he lacked the direct and substantial interest in the decision necessary to confer standing” (*O’Brien*, para. 26). The Appeals Tribunal also explained that (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 [Dispute Tribunal’s] Statute.

32. The Tribunal also recalls that under sec. 5.1 of ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process), “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”. Moreover, as a general principle, the decision of whether or how to investigate allegations of misconduct is within the Administration’s discretion. “Only in particular situations, i.e. in a case of a 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 under Article 2(1)(a) of the [Dispute Tribunal’s] Statute” (*Nadeau* 2017-UNAT-733, para. 33. See also *Yavuz* 2022-UNAT-1291, para. 53).

33. In the present case, there is no allegation of “a serious and reasonable accusation” and there is no evidence that the refusal to investigate the Applicant’s reports had any direct legal effect on him. The Applicant has not shown that the contested decisions are in non-compliance with his terms of appointment or contract of employment or have produced any direct legal consequences. Further, it is worth noting that this case does not involve an alleged breach of due process rights that

has led to an unfair decision to take disciplinary action against the Applicant. If there had been a disciplinary process, any disciplinary measure imposed at the conclusion of an unfair process by OIOS could have been challenged before the Tribunal. In this case, no such decision was taken, and there was therefore no reviewable administrative decision. The decision not to launch an investigation into the Applicant's reports of possible misconduct did not produce direct legal consequences affecting his rights under the contract of employment. On the contrary, the entire process surrounding the "trivia social evening" led to a final decision exonerating him.

34. Accordingly, the Tribunal finds that the application is not receivable.

Conclusion

35. The Tribunal rejects the application as not receivable.

(Signed)

Judge Francis Belle

Dated this 3rd day of December 2025

Entered in the Register on this 3rd day of December 2025

(Signed)

Isaac Endeley, Registrar, New York