



Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

NIELSEN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Federica Midiri, UNFPA

Introduction

1. On 3 January 2015, the Applicant, a former Procurement Assistant (G-5) in the United Nations Population Fund (“UNFPA”), Procurement Services Branch (“PSB”), Africa team, based in Copenhagen, filed an application challenging UNFPA decision not to review her complaint of misconduct (“harassment and undermining [her]”) against one of her colleagues, also a Procurement Assistant in PSB, Mrs. C.

Facts

2. On 28 January 2013, the Applicant entered the service of UNFPA in the Africa team, PSB, on a one-year temporary appointment (“TA”). Effective 23 September 2013, she was placed on Special Leave with Full Pay (“SLWFP”), and was separated from UNFPA upon the expiration of her TA on 26 January 2014.

3. By email of 22 August 2014, the Applicant addressed to an Investigations Analyst, Office of Audit and Investigations Services (“OAIS”, formerly the Division of Oversight Service (“DOS”)), UNFPA, a complaint against Mrs. C., whom she described as being one of the “PSB Africa team members who were constantly bullying [her] and who were applying efforts in order to destroy [her] career in PSB”.

4. In a phone conversation with OAIS on 10 September 2014, confirmed by email of 16 September 2014, the Applicant was notified that OAIS would not be triggering an investigation into her “complaints of harassment, bullying and abuse of authority against 12 staff members at PSB”, since OAIS had “concluded its preliminary review of the matter and [had] found that a full investigation [was] not warranted”, therefore considering the matter “closed”.

5. By email of 22 October 2014, the Applicant submitted a request for management evaluation against OAIS decision not to trigger an investigation into Mrs. C.'s behaviour. She received a reply to her request on 31 October 2014 from the Executive Director, UNFPA, by which she was notified that OAIS decisions were "outside the scope of review by UNFPA management".

6. The Applicant filed her application with the Tribunal on 3 January 2015, and the Respondent submitted his reply on 6 February 2015.

7. By Order No. 123 (GVA/2015) of 18 June 2015, the Tribunal requested the Respondent to file additional documentation with regard to the complaints filed to OAIS by the Applicant, which he did on 25 June 2015.

8. By Order No. 133 (GVA/2015) of 29 June 2015, the Tribunal informed the parties that the case would be decided on the papers, without further hearings or submissions.

Parties' submissions

9. The Applicant's principal contentions are:

a. The refusal of OAIS to launch the requested investigation is unfounded, as her complaint was duly documented and the improper behaviour of Mrs. C. against her is evident based on all the proof she already submitted on many occasions;

b. Her case is not being treated seriously by UNFPA, and her managers treated her badly as well, instead of showing her support and integrating her into the PSB team.

10. The Respondent's principal contentions are:

a. The contested decision of OAIS was taken in compliance with UNFPA 2014 Charter of OAIS, according to which OAIS has to operate independently and has discretionary authority with respect to the matters it investigates;

- b. The challenged administrative decision is furthermore lawful as it was taken in compliance with the requirements provided for in the 2013 UNFPA Policy on Harassment, Sexual Harassment and Abuse of authority. Indeed, OAIS determined that the incidents described by the Applicant in her complaint related to “interpersonal relationships amongst colleagues involving criticism and disagreements”; hence, they did not fall into the scope of prohibited conduct and did not meet a *prima facie* reasonable threshold level of misconduct. Moreover, the complaint was time-barred as it was confirmed that it referred to incidents that occurred prior to 22 September 2013, which is not within the six-month timeframe provided for by sec. 9.3.1 of the Policy;
- c. In addition to the above, the Applicant did not discharge the burden of proving that she suffered any damage from the contested decision; and
- d. In view of this, the Respondent asks for the application to be rejected.

Consideration

11. The Tribunal notes that the decision by OAIS not to trigger an investigation into the Applicant’s complaint against Mrs. C. and to close the matter was communicated to the Applicant in writing on 16 September 2014. It is this decision that the Applicant contests in her present application to the Tribunal.

Request for management evaluation

12. The Applicant submitted her request for management evaluation on 22 October 2014, and she received a reply from UNFPA on 31 October 2014. Her application before the Tribunal was then filed on 3 January 2015. The Applicant, hence, duly complied with the requirement of timely requesting management evaluation and filing an application before the Tribunal, pursuant to staff rule 11.2(c) and art. 8.1(d) of the Tribunal’s Statute respectively.

Timeliness of the complaint

13. The Tribunal further notes that the 2013 UNFPA policy on Harassment, Sexual Harassment and Abuse of Authority (“the Policy”) establishes an informal and a formal process for dealing with complaints of that nature (see sec. 6 of the Policy, under the title “Dispute Resolution”). With regard to its scope of application, sec. 3.1 states that the policy applies “to UNFPA staff members as well as to individual independent contractors”, who might be collectively referred to as “Personnel”. Under sec. 6.2 (“The Formal Process”), it is provided that:

Personnel who believe that they were subject to Harassment, Sexual Harassment or Abuse of Authority may submit a complaint to the Director, Division for Oversight Services ("DOS"), alleging that they are or were the victim of Harassment, Sexual Harassment or Abuse of Authority. Section 9 provides further details on the Formal Process.

14. With regard to sec. 9 of the Policy (Formal Process), its relevant parts for the present case read as follows:

9. Formal Process

9.1. Any Personnel and/or former Personnel may file a complaint of Harassment, Sexual Harassment or Abuse of Authority with the Director, DOS.

9.2. Should the Director, DOS, determine that the matter may appropriately be dealt with through an informal process, he or she may refer the matter to the Director, DHR, for an attempt at the informal resolution of the dispute, provided the complainant has given his/her consent to such referral.

9.3. Time limits

9.3.1 A formal complaint of Harassment, Sexual Harassment or Abuse of Authority may be addressed to the Director, DOS, by any Personnel within six (6) months from the date of the last incident of Harassment, Sexual Harassment or Abuse of Authority. These time limits may be extended by the Director, DOS, exceptional cases (emphasis in original).

15. It is established that the Applicant filed her formal complaint against Mrs. C. on 22 August 2014 when she sent an email to OAIS (formerly DOS, as explained by the Respondent); hence, the complaint was filed more than eleven (11) months after the Applicant's placement on SLWFP on 23 September 2013, and almost seven months after she was separated from UNFPA. The Applicant herself admitted, in a complaint she had filed against another of her colleagues and that is the subject of Case No. UNDT/GVA/2014/083, that she had "moved from PSB Africa team in end July 2013, so that PSB Africa team ... would stop bullying and harassing [her]". This is in line with the Respondent's statement made in his reply that during the month of August 2013, the Applicant was allowed to work from home.

16. It follows from this sequence of factual events and circumstances that, as it was the case with her other colleagues, the Applicant stopped being in interaction with Mrs. C. at work on a professional basis if not already by August 2013, then, at the latest, as of 23 September 2013, when she was formally placed on SLWFP and did not work anymore.

17. Therefore, in view of the above, it cannot but be considered that the date of the "last incident of Harassment" as provided for by sec. 9.3.1. of the Policy, if any, could only have happened on or before 23 September 2013. Hence, any complaint filed after the six-month time limit, which is applicable to each type of complainants—be it UNFPA "Personnel and/or former Personnel"—is to be considered untimely.

18. The Applicant cannot successfully argue that she only acquired effective knowledge of the alleged bullying, abuse of authority and harassment against her in April 2014, when documents were produced by the Respondent in the context of other proceedings in which she was involved before this Tribunal. Indeed, sec. 9.3.1 of UNFPA Policy does not refer to the date of the "knowledge" of the last incident, but to the occurrence of the factual incident itself.

19. Based on the above, the Tribunal concludes that the Applicant's complaint against Mrs. C. was not receivable by OAI, and that OAI refusal to conduct an investigation into this complaint did not result in a breach of any of the Applicant's rights. It follows that the Tribunal cannot but reject the present application.

Conclusion

20. In view of the foregoing, the Tribunal DECIDES:

The application is rejected in its entirety.

(Signed)

Judge Thomas Laker

Dated this 29th day of June 2015

Entered in the Register on this 29th day of June 2015

(Signed)

René M. Vargas M., Registrar, Geneva