



## United Nations Dispute Tribunal

Case No.: UNDT/NBI/2025/007  
Judgment No.: UNDT/2025/029  
Date: 30 May 2025  
Original: English

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**Before:** Francesco Buffa

**Registry:** Nairobi

**Registrar:** Wanda L. Carter

CASTELLI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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### JUDGMENT

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Nicole Wynn, AS/ALD/OHR, UN Secretariat  
Victoria Mujunga, AS/ALD/OHR, UN Secretariat

## **Introduction and procedural framework**

1. By application filed on 27 January 2025, the Applicant, a former Policy and Best Practices Officer working with the United Nations Interim Force in Lebanon filed an application alleging that the Office of Internal Oversight Services (“OIOS”) and the Chief, Conduct and Discipline Office did not properly review his complaint against his First Reporting Officer for unreasonable refusal of a requested flexible working arrangement (“FWA”) (claim 1); he also challenges the refusal to give him specific reasons for the closure of his complaint without investigation (claim 2).
2. By the same application, the Applicant also challenges the Management Advice and Evaluation Section’s (“MAES”) decision on his management evaluation request of the foregoing decisions (claim 3).
3. The Respondent submitted a reply on 28 February 2025 where it argued that the contested decisions are not receivable and, if found receivable, the application lacks merit.
4. On 2 May 2025, the Applicant filed a rejoinder.

## **Facts**

5. The Applicant, a former P-4 Policy and Best Practices Officer with the United Nations Interim Force in Lebanon (“UNIFIL or Mission”), held a continuing appointment until 1 July 2024, when he resigned and was separated from the Organization. He filed a formal complaint of abuse of authority to the UNIFIL Head of Mission (“HoM”) on 3 May 2023 about his first reporting officer’s denial of his request for a flexible work agreement (FWA Complaint).
6. In particular, in the report of a case of possible unsatisfactory conduct dated 3 May 2023, the Applicant, who did not indicate either directly nor indirectly that he considered FWA as being a right – stated that: (a) In a first case, his supervisor rejected a request for FWA without providing a justification, which is contrary to ST/SGB/2019/3 para 2.1(d); (b) In a second case, his supervisor unreasonably delayed a decision on his request for FWA for six weeks; (c) In a third case, his

supervisor rejected a request for FWA without providing a justification, which is contrary to ST/SGB/2019/3 para 2.1 (d). In addition, in this third case, without having the medical qualifications, the Applicant's supervisor instructed him to use sick leave instead; (d) In a fourth case, the Applicant's supervisor misplaced the FWA request and, when he realized this had happened, he did not inform the Applicant for at least a week. In doing so, he unreasonably delayed the decision, contrary to UNIFIL Directive #4 (2022).

7. The HoM, through the Chief, Regional Conduct and Discipline Section ("Chief, RCDS"), referred the FWA Complaint to OIOS on 4 May 2023 as per section 5.4 of the Bulletin.

8. On the same date, the Deputy Director, OIOS informed UNIFIL by email that the FWA Complaint did not "reveal any possible unsatisfactory conduct warranting a referral to OIOS as per ST/AI/2017/1" (Unsatisfactory conduct, investigations and the disciplinary process).

9. Nevertheless, the UNIFIL HoM conducted a preliminary assessment of the FWA Complaint assisted by the Regional Conduct and Discipline Section. After the assessment, the HoM decided to close the FWA complaint. The Applicant contested the HoM's decision to close the FWA Complaint which was litigated in Case No. UNDT/NBI/2023/083.

10. On 30 June 2024, the Applicant made a formal complaint to OIOS against the Chief, RCDS and the Deputy Director, OIOS, alleging that their conduct in handling the FWA Complaint was discriminatory and an abuse of authority.

11. On 22 August 2024, the Under-Secretary-General/OIOS informed the Applicant of her decision to close the complaint against the subjects and that no further action was warranted.

12. On the same day, the Applicant requested OIOS to provide the reason for its decision.

13. On 6 September 2024, OIOS informed the Applicant that it conducts its work confidentially and that they could not provide him with any additional information.

14. By Judgment *Castelli* UNDT/2024/073, issued on 7 October 2024, this Tribunal granted the application additionally filed by the Applicant contesting: (a) UNFIL's decision to not disclose to him the investigation report of the fact-finding panel convened to assess his complaint against the Principal Coordinator Officer ("PCO"), UNIFIL; and (b). The decision to close his complaint against the PCO, UNIFIL, based on the findings of the Panel's investigation report.

15. In particular, the Tribunal directed the Respondent to assess the facts indicated in the complaint and take the consequential reasoned determinations, to be communicated to the Applicant, whether to convene or not, a formal fact-finding panel; or to extend, or not, the investigative tasks of the panel already appointed.

16. By another Judgment *Castelli* UNDT/2024/077, issued on 10 October 2024, this Tribunal dismissed the application contesting the 9 June 2023 UNIFIL decision to not convene a fact-finding panel and to close his 4 May 2023 complaint of unsatisfactory conduct against Mr. J, his former first reporting officer, for denying two requests for a flexible work agreement and delay in approving others, which constituted abuse of authority and created a hostile work environment.

17. On 14 October 2024, the Applicant requested management evaluation of the contested decision mentioned in para. 1 above.

18. By email on 31 October 2024, OIOS informed the Applicant of its reasons for closing the Complaint. OIOS stated:

Dear Mr. Castelli,

I write to supplement my earlier response to you regarding your report of possible unsatisfactory conduct by two staff members.

You made a report of unsatisfactory conduct against Ms. Coker and Mr. Finniss alleging that they had failed to carry out a mandatory review of a 3 May 2023 report you had filed against your First Reporting Officer. Your 3 May 2023 complaint was carefully reviewed by the OIOS Investigations Division, and a decision was made that it did not warrant investigation. This decision-making was

confirmed by UNDT in Judgment UNDT-2024-077. There was no indication in either case of any discrimination, abuse of authority, or other misconduct in the discharge by either staff member of their official functions.

It is for these reasons that it was determined that no further action was warranted and that the matter should be closed. I trust that this enables better understanding of the reasoning for the outcome that I earlier communicated.

19. On 26 November 2024 MAES upheld the contested decision.

## **Submissions**

### *Applicant's submissions*

20. In these proceedings, the Applicant complains that the 22 August 2024 OIOS decision not to investigate, reaffirmed on 6 September 2024, was taken hastily, and produced adverse legal consequences, as it effectively foreclosed any further review of serious allegations concerning retaliation and abuse of authority.

21. The Applicant stresses that the decision not to investigate his complaint and not to provide reasons for that decision is a matter closely connected to his conditions of employment and the fundamental rights guaranteed therein. Also, given the link between these allegations and prior Tribunal findings in *Castelli* UNDT/2024/073 (which confirmed unfair treatment), the denial of further action perpetuates the administrative impunity previously criticized and confirms his serious allegations of retaliation and abuse of authority prohibited under ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority) and ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process).

22. According to the Applicant, the decisions had material legal consequences: it prevented the initiation of a fact-finding or disciplinary process in a case where abuse of authority had previously been established in a related judgment (*Castelli* UNDT/2024/073). Therefore, the failure to open an investigation reinforces a pattern of impunity that undermines the protections offered to staff under the internal justice system.

23. As to the management evaluation outcome in this case, in the Applicant's opinion it offered no genuine review of the Applicant's grievance and relied entirely on internal policy justifications without engaging with the substance of the Applicant's claims or addressing the procedural inconsistencies raised; that renders the review process ineffective and devoid of the transparency required by jurisprudence (see *Hastings*, 2011-UNAT-109).

24. The Applicant submits that the OIOS decision not to investigate, as well as the perfunctory confirmation of this decision through the management evaluation process, are both tainted by procedural irregularity, lack of transparency, and disregard for established rules. He maintains that the Organisation fell short in adhering to its due process, which is a cornerstone of disciplinary proceedings. OIOS in reaching its decision did neither rely on the evidence he provided, nor allowed him the right to be heard.

25. The Applicant concludes requesting the Tribunal: to proceed to examine the merits of the case; to consider the annulment of the decision not to initiate an investigation and, where appropriate, direct remedial action; to consider, in light of the system shortcomings, to award moral/non-pecuniary damages, material damages since the systemic approach to the Applicant's request to address abuse of authority ultimately contributed to his forced resignation; and/or to issue a declaration of unlawful conduct.

#### *Respondent's submissions*

26. The Respondent's position is that the application is not receivable on two grounds:

- a. The contested decision is not a reviewable administrative decision. It had no direct effect on the Applicant, had no external legal effect, and did not adversely affect the Applicant's contractual employment rights. It is not a reviewable administrative decision per articles 2(1)(a) and 8(1)(a) of the Dispute Tribunal Statute.
- b. The Application is also not receivable insofar as it contests the management evaluation outcome. The outcome of a management evaluation request is

not an administrative decision under art. 2(1)(a) of the Dispute Tribunal Statute. Therefore, the Dispute Tribunal lacks jurisdiction to adjudicate that claim.

27. The Respondent further states that should the Tribunal find the application receivable, it is without merit.

28. OIOS has full operational independence and broad discretion in determining which complaints to investigate; the Applicant has no right to an investigation.

29. In the present case, the contested decision was lawful, rational, and procedurally correct under ST/SGB/2019/8, and ST/AI/2017/1. The USG/OIOS determined that the complaint did not warrant an investigation because the alleged conduct could not amount to misconduct and instead complied with the legal framework.

30. The USG/OIOS considered all relevant information in deciding not to initiate an investigation and acted within the prescribed timelines. The Chief, RCDS and the Deputy Director followed the procedures outlined in the AI and the Bulletin. The Applicant has shown no procedural breach or a manifestly unreasonable decision.

31. The Respondent also stresses that the Applicant had no right to be heard during the preliminary assessment as he alleges. He also had no right to an explanation following the closure of his Complaint, and that in any case such explanation was given to him.

32. Finally, OIOS informed the Applicant of the reason for closing his complaint on 31 October 2024.

## **Consideration**

### *Receivability*

33. The Tribunal preliminarily notes that the application is not receivable insofar as it contests the management evaluation outcome (claim 3).

34. The outcome of a management evaluation request is not an administrative decision under art. 2(1)(a) of the Dispute Tribunal Statute. Therefore, the Dispute Tribunal lacks jurisdiction to adjudicate that claim (see *Nestase* 2023-UNAT-1373, para. 40).

35. As to the other claims (claim 1 and 2), the contested decisions are reviewable administrative decisions per articles 2(1)(a) and 8(1)(a) of the Dispute Tribunal Statute.

36. Indeed, the United Nations Appeals Tribunal (“UNAT”) 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 *Reilly* 2022-UNAT-1309, para. 76; *O’Brien* 2023-UNAT-1313).

37. In the present case, the decisions related to claims 1 and 2 had an effect on the Applicant’s work-relationship, given that they could have affected the Applicant’s contractual employment rights. Claims 1 and 2 are accordingly receivable.

#### *Merits*

38. Sections 5.5, 5.6 and 5.7 of the ST/AI/2017/1 state:

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 or to:

- (a) Take managerial action, without prior consultation with the staff member; and/or
- (b) Issue a written or oral reprimand, provided the staff member has had the prior opportunity to comment in writing on the facts and circumstances, in accordance with staff rule 10.2 (c).

39. It results from the records that the Applicant's FWA Complaint was referred to the Mission for handling and the Applicant availed his rights to contest the outcome through the internal justice system. The application (whose subject is not the Applicant's right to have FWA, but merely on his right to be given a justification for the refusal of the FWA request, and on OIOS' refusal to investigate the supervisor's refusal to provide said justification) cites no conduct by any of the subjects of the Complaint that could amount to misconduct.

40. It results from the records that in the email exchange on 4 May 2023, at 2:06 pm, James Finniss, Deputy Director, OIOS wrote to Aminata Coker, Chief RCDS that:

As discussed, I have concerns receiving the report and submitting same to OIOS intake as the complainant's position suggests that he considers FWA a right/entitlement, whereas the provisions of ST/SGB/2019/3 clearly state to the contrary, namely that FWA arrangements are purely voluntary for all concerned; accordingly, the complainant's report does not reveal any possible unsatisfactory conduct warranting referral to OIOS as per ST/AI/2017/1 and it is respectfully suggested that the Complainant be so informed.

As to the complainant's claims of retaliation, it is recommended that the complainant's attention be drawn to the provisions of ST/SGB/2017/2/ Rev.1.

41. The Applicant objects to the mode of communication between the subjects and the time spent discussing the Complaint. However, neither the Bulletin nor the

AI prohibits MS Teams or email communication to discuss a Complaint or prescribes a minimum amount of time to consider it.

42. The subjects of the Complaint followed the procedure set out in sections 4 and 5 of the AI. The Chief, RCDS promptly forwarded the Applicant's complaint to OIOS, which conducted an assessment to determine whether it merited any action. The Deputy Director and the Chief, RCDS discussed the Complaint on an MS Teams call that was documented (*See Application, Annex 3*).

43. In *Castelli* UNDT/2024/077, this Tribunal already stated that the assessment of the lawfulness of the Administration's decision not to convene a fact-finding panel on the Applicant's claim that the FRO incorrectly applied the rules regarding flexible work agreements requires necessarily, as a preliminary step, an assessment of the right of the staff member to be allowed FWA.

44. The Tribunal also noted that the staff member is not entitled to have FWA allowed by the Administration, and that FWA is not an entitlement and is not the object of a right, in the light of Secretary-General's Bulletin ST/SGB/2019/3 (Flexible working arrangements). In *AAL* 2023-UNAT-1342, para. 28, it was stressed by UNAT that there is no right to flexible working arrangements, although they should be viewed favourably "where exigencies of service allow".

45. The denial of FWA or delay in its approval without providing a basis for the denial/delay, consequently, could entail a fact of mere mismanagement which does not impact the matter, remaining very difficult to see an abuse of discretion where no right to FWA is envisaged.

46. Following what was already stated in the recalled Judgment (which is not *res judicata*, having been appealed and still pending before UNAT), with reference to the present case, the Tribunal finds the assessment by OIOS not unreasonable, given that the lack of a right to FWA (which the Applicant himself acknowledges clearly in this proceedings) excludes any abuse in the manager's failure to give or to promptly give a reasoning for the refusal of its concession.

47. Claim 1 is, therefore, rejected.

48. As to claim 2, the Tribunal notes that, upon his request, the Applicant received an explanation following the closure of his Complaint (*See Reply annex 6, email on 22 August 2024 and, in particular, email of 31 October 2024*).

49. The Applicant was clearly informed that:

Your 3 May 2023 complaint was carefully reviewed by the OIOS Investigation Division, and a decision was made that it did not warrant investigation. This decision-making was confirmed by UNDT in Judgment UNDT-2024-077. There was no indication in either case of any discrimination, abuse of authority, or other misconduct in the discharge by either staff member of their official functions.

It is for these reasons that it was determined that no further action was warranted and that the matter should be closed.

50. This information was provided to the Applicant in a reasonable time, justified in the case by the opportunity for the Administration to await the publication of *Castelli* UNDT-2024-077 on similar matter. It is worth recalling that the Applicant, after having received the said email, did not contest the reasoning therein provided.

51. Claim 2 is, therefore, moot.

### **Conclusion**

52. In light of the foregoing, for the different reasons stated above, the application is rejected in its entirety.

*(Signed)*

Judge Francesco Buffa

Dated this 30 day of May 2025

Entered in the Register on this 30 day of May 2025

*(Signed)*

Wanda L. Carter, Registrar, Nairobi