UNDT/2016/116, Nadeau

UNAT Held or UNDT Pronouncements

The Tribunal found that there was no basis for finding that the OiC/MEU's writing in the MEU's letter to the Applicant amounted to a breach of either ST/SGB/2008/5 or ST/AI/371 and the USG/DM, therefore, did not infringe on the Applicant's rights when dismissing his complaints against the OiC/MEU. Accordingly, the application was dismissed.

Decision Contested or Judgment/Order Appealed

The Applicant, an Investigator with the Office of Internal Oversight Services, contested the dismissal by the Under- Secretary-General for Management ("USG/DM") of two complaints that the Applicant had submitted against the Officer-in-Charge of the Management Evaluation Unit (OiC/MEU) pursuant to ST/SGB/2008/5 (Prohibition of Discrimination, Harassment, Including Sexual Harassment, and Abuse of Authority) and ST/AI/371 (Revised Disciplinary Measures and Procedures).

Legal Principle(s)

Scope of judicial review. The Appeals Tribunal, in Nwuke 2010-UNAT-099, defined the limitations of the judicial review when examining a staff member's right to have action taken against another staff member for possible misconduct, stating that, "In light of ST/SGB/2008/5, Chapter XI of the Staff Rules, and the UNDT Statute, the Appeals Tribunal concludes that when the claims regard issues covered by ST/SGB/2008/5, the staff member is entitled to certain administrative procedures. If he or she is dissatisfied with their outcome, he or she may request judicial review of the administrative decisions taken. The UNDT has jurisdiction to examine the administrative activity (act or omission) followed by the Administration after a request for investigation, and to decide if it was taken in accordance with the applicable law. The UNDT can also determine the legality of the conduct of the

investigation.”The Applicant’s rights were not infringed. The Tribunal found that the relevant letter from MEU was written in an uncontroversial, clear, simple and plain everyday conversational English which set out the MEU’s reasons andfindings based on the management evaluation request filed by the Applicant himself. The Tribunal, therefore, found nothing contentious or improper in the letter that can in any possible manner be construed as either (a) amounting to discrimination, harassment, sexual harassment or abuse of authority as defined in ST/SGB/2008/5 or (b) suggesting that the MEU/OiC has been involved in “unsatisfactory conduct for which a disciplinary measure may be imposed” pursuant to ST/AI/371, as amended by ST/AI/371/Amend.1.

Outcome

Dismissed on merits

Full judgment

Full judgment

Applicants/Appellants

Nadeau

Entity

OIOS

Case Number(s)

UNDT/NY/2016/9

Tribunal

UNDT

Registry

New York

Date of Judgement

26 Aug 2016

Language of Judgment

English
French

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct
Abuse of authority
Discrimination and other improper motives
Standard of review (judicial)
Disciplinary cases

Applicable Law

Administrative Instructions

- ST/AI/371

Secretary-General's bulletins

- ST/SGB/2008/5
- ST/SGB/2010/9

Staff Rules

- Rule 11.2

UNDT RoP

- Article 10.1
- Article 16.1
- Article 16.2
- Article 19

UNDT Statute

UNAT Statute

- Article 2.1(a)