

UNDT/2019/129, Applicant

UNAT Held or UNDT Pronouncements

Was the investigation properly conducted? The alleged lack of transparency There were indeed “exceptional circumstances” that justified the disclosure of the investigation report to the Applicant. Since the Applicant was granted access to the investigation report and all relevant documents at the judicial stage, prior to the hearing and in order to prepare for it, the Tribunal considers that the Applicant had the opportunity to have all the elements required to properly present his case before the Tribunal. While it would have been more appropriate for the Organization to provide the Applicant with a proper summary of the findings and conclusions of the investigation at an earlier stage, i.e., after the investigation had been finalized, the Tribunal is of the view that this procedural flaw bears no impact on the Applicant’s right to have access to the internal justice system nor to prepare his case. The alleged breach of confidentiality The onus is on the Applicant to demonstrate that there was a breach of the duty of confidentiality regarding the content of the complaint and that said breach is imputable to the Administration. There was not sufficient evidence to support the Applicant’s allegation that the content of said complaint was made available to the alleged offender prior to the beginning of the fact-finding investigation. The alleged lack of evidence concerning managerial actions The Tribunal underlined that since the former USG/OIOS initially considered that there were no grounds to initiate an investigation, she was not compelled to take any managerial action at that stage. Indeed, the duty to take appropriate actions, if any, only emerged after the fact-finding investigation was concluded and the investigation report was finalized and assessed by the current USG/OIOS. The evidence shows that the Applicant was not only made aware of the USG/OIOS’s views but he was also involved in different meetings and conversations with the Director/OIOS who travelled from New York to Vienna to meet both the Applicant and the Deputy Director of the Vienna Office, so as to find a solution. As a consequence, the Tribunal was not persuaded that the Applicant was not consulted nor involved in the resolution of the work problems he was facing. Was the investigation unduly delayed? The Tribunal agreed with the Applicant in that the investigation took longer

than the standard three months. However, the Tribunal noted that during the investigation a new USG/OIOS took office, there were difficulties in the appointment of the panel and the investigation was very lengthy and cumbersome. Mindful of these difficulties, the Tribunal reiterated that this does not preclude the Organization's duty of care and its responsibilities towards aggrieved staff members. Even though there is no evidence of gross negligence from the part of the Organization, the investigation process should have been expedited so as to avoid keeping the staff member in a "limbo" concerning the outcome of his complaint and to abide by the deadlines contemplated in the applicable framework. Was the decision not to take disciplinary action against the alleged offender unlawful? The Tribunal cannot replace the decision-maker and, after all, it is the Administration that is better positioned to evaluate the circumstances of the complaint and whether it has solid grounds or not, to justify a disciplinary action. In the present case, the Tribunal was satisfied that the Organization conducted a proper investigation into the complaint. Is the Applicant entitled to any compensation? There is undoubtedly a close link between the delay in investigating the Applicant's complaint and the damages he has suffered. Taking into account the circumstances of the present case, the available evidence and the time that it took for the Administration to initiate and finalise the investigation in relation to the Applicant's complaint of harassment, the Tribunal concluded that the stress and anxiety suffered by the Applicant since 2015 until the investigation was finalised, should be compensated. Accordingly, the Tribunal found reasonable and proportionate to the serious impact on the Applicant's well-being and mental health to grant him compensation in the amount of USD5000 for moral damages.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision of the Under-Secretary General of OIOS not to pursue disciplinary action against the Deputy Director, Investigations Division, OIOS, pursuant to a complaint that he had made under ST/SGB/2008/5.

Legal Principle(s)

Following an investigation under ST/SGB/2008/5, the Organization is not obliged to disclose to the parties the full content of the report unless "extraordinary circumstances" arise. As general principle, the investigation of disciplinary charges

against a staff member is the privilege of the Organization itself and it is not legally possible to compel the Administration to take disciplinary action against a staff member (see Abboud 2010-UNAT-100, Benfield-Laporte 2015-UNAT-505 and Oummih 2015-UNAT-518). Compensation for moral damages can only be granted if three cumulative requirements are met: i) If there was a breach of a staff member fundamental rights (either substantive or procedural) ii) Said breach is caused by the Administration's illegal act or omission and caused the Applicant harm; and iii) There is sufficient evidence provided by the Applicant of said breach and the link between the two.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Applicant

Entity

OIOS

Case Number(s)

UNDT/GVA/2017/075

Tribunal

UNDT

Registry

Geneva

Date of Judgement

23 Jul 2019

Duty Judge

Judge Bravo

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Investigation

Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5

UNDT Statute

- Article 10.5(b)

Related Judgments and Orders

UNDT/2010/205

UNDT/2012/201

2010-UNAT-100

2015-UNAT-505

2015-UNAT-518

2017-UNAT-742

2017-UNAT-787

2018-UNAT-874