

UNDT/2019/142, Applicant

UNAT Held or UNDT Pronouncements

Receivability The contested decision, i.e., the decision taken by the Director, ID, OIOS, not to rearrange the Applicant's reporting lines is an administrative decision. In fact, reporting lines relate directly to the core of the employee-employer relationship and have an impact not only on the daily functions that the staff member performs but, also, on its evaluation and future career prospects. Hierarchy and reporting lines are an essential part of a complex normative framework for performance management, namely ST/AI/2010/5, and impact directly the staff member's terms of employment. Reporting lines constitute a core element of the relationship between staff members and the Organization. Therefore, decisions taken in relation to it, have an obvious impact on his or her daily performance and conditions of service. The requirements defined in Andronov concerning administrative decisions are met in this case, i.e., the decision taken by the Director, ID, OIOS, not to change the Applicant's reporting lines was unilaterally taken by the Administration, relates solely to him and impact his terms of employment. For said reasons, the Tribunal finds the application receivable ratione materiae. Lawfulness of the contested decision Reporting lines in OIOS The institutional framework of OIOS clearly shows that the reporting lines correspond to a hierarchical chain that goes from the top to the bottom. It is part of the responsibilities of the Deputy Director, ID, OIOS, to review investigation reports drafted by the Applicant. Indeed, the Deputy Director, ID, OIOS, has the overall responsibility to perform the "quality check" of the investigation reports to ensure that they comply with the required standards. Bearing in mind the witnesses' testimonies and the evidence produced at the hearing, the Tribunal is of the view that the problems affecting the OIOS Vienna Office cannot be solely attributed to the management style of the Deputy Director, ID. OIOS. On the contrary, the Applicant has also his share of responsibility in the difficult working environment in the OIOS Vienna Office. Discretion of the Organization From the point of view of the hierarchy of norms, ST/SGB/2008/5 is at a higher level than ST/AI/2010/5. According to section 5.3 of ST/SGB/2008/5, the Organization has the duty to take prompt and concrete action in response to reports

and allegations of prohibited conduct. The duty of care and the obligation to take concrete action may, indeed, justify, in particular cases, a change in the reporting lines. However, changing reporting lines should be a last resort option due to its potentially disruptive impact on an office's workflow and a staff member's performance management. It is within the discretion of the Administration to consider what the available options are when examining a complaint of prohibited conduct and to make a decision about it, taking into account the "duty of care" towards staff members and the interests of the Organization. The current legal framework leaves a certain margin of manoeuvre for the Organization to act without disrupting an office's workflow and the established hierarchical chain. The managerial actions taken by the Administration following the Applicant's complaint were made based on the findings of the investigation report and the Tribunal sees no reason to depart from them. The evidence provided by the witnesses' testimony at the hearing as well as the documentary evidence on file do not purport the Applicant's allegations of harassment and retaliation that may have led to a change in the reporting lines. Instead, the Tribunal finds that this matter is rather a work-related conflict linked to the restructuring process of the OIOS Vienna Office, the managerial style of the Deputy Director, ID, OIOS, and the defensive attitude of the Applicant. Under the factual circumstances of the case and the applicable legal framework, the Tribunal finds that the contested decision not to change the Applicant's reporting lines was a proper exercise of administrative discretion and, consequently, it was lawful.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to continue to involve the Deputy Director, Investigations Division ("ID"), OIOS, in supervisory and managerial roles vis-à-vis him.

Legal Principle(s)

To be appealable, an administrative decision must have been unilaterally taken by the Administration, be of an individual application, and carry direct legal consequences for the terms of employment of a particular staff member. The Secretary-General is the ultimate [authority] responsible for the well-functioning of the administrative apparatus of the Organization and is at the top level of the

hierarchical chain in the United Nations system. No staff member has the right to select his or her supervisors (see, Rees 2012-UNAT266).

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Applicant

Entity

OIOS

Case Number(s)

UNDT/GVA/2018/112

Tribunal

UNDT

Registry

Geneva

Date of Judgement

12 Sep 2019

Duty Judge

Judge Bravo

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Performance management

Applicable Law

Administrative Instructions

- ST/AI/2010/5

GA Resolutions

- A/RES/48/218

Secretary-General's bulletins

- ST/SGB/2002/7
- ST/SGB/2008/5

Staff Regulations

- Regulation 1.2(c)

UN Charter

- Article 97

UNDT Statute

UNAT Statute

- Article 2.1(a)

Related Judgments and Orders

2010-UNAT-058

2012-UNAT-269

2014-UNAT-475

2014-UNAT-481

2015-UNAT-563

2010-UNAT-084

2012-UNAT-266