

UNDT/2021/165, Applicant

UNAT Held or UNDT Pronouncements

Receivability The Applicant did not request management evaluation of the following contested decisions: 1) The Administration's failure to take appropriate action in relation to her complaint; 2) Undue delays in the investigation, in the initiation and conducting of a disciplinary process, and in taking the final decision on the imposition of disciplinary sanctions against her former supervisors; and 3) The Administration's failure to take appropriate action to protect her from sexual harassment in her workplace environment and to remedy the harm suffered. Moreover, the Tribunal is not persuaded by the Applicant's submission that the application is receivable in its entirety because all the issues contained in her application are immanently connected. Indeed, the evaluated decision, which is very specific and is qualified with para. 5.18(c) of ST/SGB/2008/5, is not necessarily immanently connected with the alleged failure to take appropriate actions or the alleged undue delays. Assuming, *arguendo*, that all the issues are immanently connected, this does not waive the requirement of management evaluation of the decisions outlined at para. 27 above. To hold otherwise would defeat the purpose of management evaluation which is to "afford the Administration the opportunity to correct any errors in an administrative decision so that judicial review of the administrative decision is not necessary" (see Farzin 2019-UNAT-917, para. 40). The Tribunal also finds that there is no merit in the Applicant's alternative submission that it has competence to directly hear all the issues she raised by applying staff rule 10.3(c) *mutatis mutandis* to her situation because the contested decisions at issue are not disciplinary or non-disciplinary measures under staff rule 10.2. Therefore, the Tribunal finds that the elements of the application regarding the contested decisions outlined above are not receivable under art. 8.1(c) of its Statute and staff rule 11.2 (a). Whether the Administration's decision not to provide the Applicant with the information on the specific actions taken with respect to her supervisors is lawful Having reviewed the parties' submissions regarding the decision not to provide the Applicant with the information on the specific actions taken, the Tribunal notes that the main issue is the interpretation of sec. 5.18(c) of

ST/SGB/2008/5. First, the text of sec. 5.18(c) of ST/SGB/2008/5 clearly states that the aggrieved individual will be informed of “the action taken”. The language used in this provision is plain, common and causes no comprehension problems. Indeed, the Applicant has admitted in both her application and closing submission that sec. 5.18(c) of ST/SGB/2008/5 does not specify per se how detailed the information about the action taken should be. Therefore, sec. 5.18(c) of ST/SGB/2008/5 does not provide any textual basis to require the Administration to inform the complainant of the specific actions taken. Second, the preamble of ST/SGB/2008/5 sets forth its object, which is to ensure that “all staff members of the Secretariat are treated with dignity and respect”. The special procedural provisions adopted by ST/SGB/2008/5 are purposely conceived to “treat the situation with sensitivity and confidentiality” [...] in order to achieve the main objective clearly stated at the beginning of ST/SGB/2008/5, which advocates dignified and respectful treatment of both the aggrieved individual and the alleged offender. Further, sec. 5.2 of ST/SGB/2008/5 provides contextual support in interpreting sec. 5.18(c), stating that “All reports and allegations of prohibited conduct shall be handled with sensitivity in order to protect the privacy of the individuals concerned and ensure confidentiality to the maximum extent possible.” Therefore, by requiring the Administration to inform the aggrieved individuals of the action taken with no further details, sec. 5.18(c) of ST/SGB/2008/5 seeks to strike a balance between the right of an aggrieved individual, the privacy of the subject staff member and the confidentiality of the process. Third, the Tribunal is not convinced by the Applicant’s submission that the requirements set out in sec. 8.9 of ST/SGB/2017/2/Rev.1 confirm that the Administration is obliged to provide the aggrieved individual as specific information as possible. That provision governs disciplinary actions imposed for the retaliatory action, and thus is not comparable to the circumstances of the present case. In addition, considering that a staff member has no right to compel disciplinary action against another staff member, the Tribunal finds that the Applicant similarly does not have a right to compel the Administration to provide the details of the disciplinary action taken. In light of the foregoing, the Tribunal finds that the decision not to provide the Applicant with the specific information on actions taken with respect to her supervisors is not unlawful and that the Applicant fails to establish that the Administration breached her contractual rights by making such decision. Remedies Having found that the Applicant failed to establish that the Respondent acted in any manner contrary to law, the Tribunal finds no basis for the remedies pleaded for in the application.

Decision Contested or Judgment/Order Appealed

The Applicant, a staff member of the United Nations Office on Drugs and Crime (“UNODC”), contests several decisions or actions in relation to the Administration’s handling of her complaint of sexual harassment by her former supervisors under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority), including: 1) The Administration’s failure to take appropriate action in relation to her complaint; 2) The Administration’s decision not to provide her with the information on the specific actions taken with respect to her former supervisors, to the extent required by sec. 5.18(c) of ST/SGB/2008/5; 3) Undue delays in the investigation, in the initiation and conducting of a disciplinary process, and in taking the final decision on the imposition of disciplinary sanctions against her former supervisors; and 4) The Administration’s failure to take appropriate action to protect her from sexual harassment in her workplace environment and to remedy the harm suffered.

Legal Principle(s)

An application is receivable if an applicant has previously submitted the contested administrative decision for management evaluation, where required. Art. 31(1) of the Vienna Convention on the Law of Treaties sets forth generally accepted rules for interpreting an international document, which refers to interpretation according to the “ordinary meaning” of the terms “in their context and in the light of its object and purpose” (see e.g., UN Administrative Tribunal Judgment No. 942, Merani (1999), para. VII; Avognon et al. UNDT/2020/151, para. 50). It follows that “when the language used in the respective disposition is plain, common and causes no comprehension problems, the text of the rule must be interpreted upon its own reading, without further investigation” (see, e.g., Avognon et al., para. 50; Scott 2012-UNAT-225, para. 28).

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Applicant

Entity

UNODC

Case Number(s)

UNDT/GVA/2020/49

Tribunal

UNDT

Registry

Geneva

Date of Judgement

29 Dec 2021

Duty Judge

Judge Belle

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Investigation

Jurisdiction / receivability (UNDT or first instance)

Applicable Law

Agreements, conventions, treaties (etc.)

- Vienna Convention on the Law of Treaties

Secretary-General's bulletins

- ST/SGB/2008/5
- ST/SGB/2017/2/Rev.1

Staff Rules

- Rule 10.2
- Rule 10.3(c)
- Rule 11.2

UNDT Statute

- Article 8.1(c)

Related Judgments and Orders

2020-UNAT-992

2019-UNAT-936

2019-UNAT-917

UNDT/2020/151

2012-UNAT-225

2017-UNAT-733