

# 2022-UNAT-1232, Baker Okwir

## UNAT Held or UNDT Pronouncements

Mr. Okwir appealed. UNAT found that the UNDT correctly held that the OiC/OIOS had the authority to take the decision not to investigate Mr. Okwir's allegations. As Section 4.3 of ST/SGB/2019/2 provides that all subdelegations issued by the predecessor shall remain valid unless otherwise withdrawn or modified by the successor, the UNDT concluded that the mere fact that the new USG/OIOS began her term did not make subdelegations by the predecessor invalid. UNAT concluded that on 25 October 2019, both the ASG/OIOS and the newly appointed USG/OIOS were competent to make the decision. The new USG/OIOS had delegated power, and the ASG/OIOS still had subdelegated power. UNAT held that the UNDT correctly found that the preliminary assessment was procedurally correct. It followed from Sections 5.4 and 5.5 of ST/SGB/2019/8 that the USG/OIOS (and in the present case the OiC/OIOS), here the OiC/OIOS, as the responsible official in OIOS had the only authority to receive reports of unsatisfactory conduct relating to OIOS staff members, to conduct a preliminary assessment and to take the decision to either initiate an investigation or not initiate an investigation. UNAT held that the preliminary assessment undertaken by the ASG/OIOS was in accord with ST/AI/2017/1. The ASG/OIOS did not find sufficient grounds to initiate an investigation because he did not consider the actions of the Chief, HAS, IAD/OIOS to amount to misconduct. UNAT concluded that the UNDT correctly found that the alleged actions by the Chief, HAS, IAD/OIOS and the Director towards Mr. Okwir, even if true, did not amount to prohibited conduct (harassment, abuse of authority) but fell in the realm of workplace disagreements.

## Decision Contested or Judgment/Order Appealed

The UNDT held that the OiC/OIOS had the authority to take the decision not to investigate Mr. Okwir's allegations presented in the complaint. The ASG/OIOS had been appointed as OiC/OIOS by the previous USG/OIOS pending the appointment of a new head of entity. As Section 4.3 of ST/SGB/2019/2 provides that all subdelegations issued by the predecessor shall remain valid unless otherwise withdrawn or modified by the successor, the UNDT concluded that the mere fact that the new USG/OIOS began her term did not make subdelegations by the predecessor invalid. The UNDT further stated there was no allegation or evidence that subdelegations to the ASG/OIOS as OiC/OIOS had been withdrawn or modified by the new USG/OIOS. The UNDT further held that the responsible official, the OiC/OIOS, had lawfully considered that the facts reported by Mr. Okwir did not amount to misconduct, even if true. Finally, the UNDT held that the decision was reasonably taken. Even though there were tensions between Mr. Okwir and the Chief regarding the monitoring of his attendance and work performance, these facts related to work performance and other work-related issues and did not amount to prohibited conduct. The UNDT dismissed the application.

## Legal Principle(s)

When judging the validity of the Secretary-General's exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General. A staff member has no right to compel the Administration to conduct an investigation unless such right is granted by the Regulations and Rules. In such cases, it would be covered by the terms of appointment and entitle the staff member to pursue his or her claim even before the UNDT, and, after review, the Tribunal could order to conduct an investigation or

to take disciplinary measures A fact-finding investigation may only be undertaken if there are sufficient grounds or, respectively, reason(s) to believe that a staff member has engaged in unsatisfactory conduct for which a disciplinary measure may be imposed. If there are no such grounds or reasons, the Administration is not allowed to initiate an investigation against a staff member. This is due to the fact that the mere undertaking of an investigation may have a negative impact on the staff member concerned.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Baker Okwir

Entity

UN Secretariat

Case Number(s)

2021-1547

Tribunal

UNAT

Registry

New York

Date of Judgement

18 Mar 2022

President Judge

Judge Knierim

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Fact-finding investigation

Investigation

Applicable Law

Administrative Instructions

- ST/AI/2017/1

Secretary-General's bulletins

- ST/SGB/2019/2

Staff Rules

- Rule 1.2

UNAT RoP

- Article 18

UNAT Statute

- Article 2.5

## UNDT RoP

- Article 18.2

## UNDT Statute

- Article 9.1

## Related Judgments and Orders

2010-UNAT-084

2010-UNAT-099