

# **UNDT/2022/056, Nastase**

## **UNAT Held or UNDT Pronouncements**

The Tribunal observed that the Applicant's complaint involved one specific incident, i.e., a chain of emails where his performance was being criticized, which evolved into two managerial decisions by his supervisors: a transfer of functions and instauration of a PIP. The Applicant perceived those emails as harassment. However, for a staff member's behaviour to be punishable as constituting the disciplinary offence of harassment pursuant to ST/SGB/2019/8, the analysis of said behaviour must pass a two-fold test: it must be found "improper and unwelcome" and "might reasonably be expected or be perceived to cause offence or humiliation to another person". The test focuses on the conduct itself and requires an objective examination as to whether it could be expected or perceived to cause offence or humiliation to a reasonable person. Having examined the evidence on record, the Tribunal finds that there were no meaningful indicia of harassment in the emails and follow-up actions that were the object of the Applicant's complaint. The e-mails stated nothing more than a performance issue that needed to be addressed, and the follow-up measures taken by the Applicant's supervisors are well within their managerial and supervisory authority. The fact that the Applicant does not agree with them, or even the fact that the Applicant perceived said decisions as offensive, does not automatically constitute harassment. In addition, the Applicant argues that USG/DOS should have opened an investigation into his harassment complaint because had already OIOS stated that it falls within the application of ST/SGB/2019/8 and had referred it to USG/DOS for investigation. However, such interpretation is of no merit. OIOS' preliminary understanding that the complaint fell within the scope of the ST/SGB/2019/8 did not mean that the USG/DOS had an obligation to open an investigation. From the moment OIOS referred the complaint as "possible prohibited conduct" to the USG/DOS to "thoroughly review and assess the matter", it became the latter's responsibility to determine whether there were sufficient grounds to warrant opening an investigation. The complaint reported to both OIOS and the USG/DOS never addressed any concerns of retaliation. The Applicant was asked at least twice to amend his complaint by providing specific details of the allegations,

but he never mentioned a retaliatory motive behind the above-mentioned actions, not until reaching the MEU stage. Thus, the USG/DOS could not have known at the time of the decision that the Applicant was concerned about being subject to retaliation. In this sense, the decision to close the complaint without opening an investigation cannot be rendered illegal based on a new argument raised by the Applicant after said decision had been taken. In reviewing the handling of the Applicant's complaint, the Tribunal finds that the procedures were properly followed, and all relevant considerations were taken into account. The initial complaint as submitted to OIOS was subsequently referred to the USG/DOS as per sec. 5.3 of the ST/AI/2017/1. Following this referral of the complaint by OIOS to the USG/DOS, the Applicant was requested to provide additional documentation to fully assess his allegations. The Administration reviewed those submissions in their entirety and determined that they related to work and performance matters.

## Decision Contested or Judgment/Order Appealed

The Applicant contests the decision to close his complaint of harassment without opening an investigation. The harassment complaint focused on a chain of emails criticizing his performance and two follow-up decisions made by the Applicant's supervisors to transfer his functions and establish a PIP for him.

## Legal Principle(s)

## Outcome

Dismissed on merits

## Outcome Extra Text

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Nastase

## Entity

UNOPS

## Case Number(s)

UNDT/GVA/2021/12

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

13 Jun 2022

## Duty Judge

Judge Hunter Jr.

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Termination

Burden of proof

No expectancy of renewal

Non-renewal  
Abolition of post  
Non-renewal  
Standard of review (judicial)

## Applicable Law

Administrative Instructions  
Secretary-General's bulletins

- ST/SGB/2017/1
- ST/SGB/2019/8

## Related Judgments and Orders

UNDT/2011/050  
UNDT/2017/055  
UNDT/2018/018  
UNDT/2022/048  
2018-UNAT-873  
2017-UNAT-733  
2019-UNAT-917  
2013-UNAT-301  
2010-UNAT-084