

UNDT/2023/061, Pumpyanskaya

UNAT Held or UNDT Pronouncements

The context of the case in *O'Brien* is not similar. Essentially, in *O'Brien*, the applicant was the subject of an investigation, whereas in the present case, the Applicant was the complainant. Accordingly, In *O'Brien*, the applicant opposed a disciplinary investigation launched against himself based on a misconduct complaint made by others, and he then contested a decision to reject his request for an independent review of the investigation. The Appeals Tribunal, however, dismissed the applicant's challenge because the decision-maker eventually held in his favour as, contrary to the preliminary recommendation of the investigative entity, it was decided not to impose any sanction against him. Based thereon, the Appeals Tribunal therefore found that the decision not to launch an independent review "did not produce direct legal consequences affecting [his] rights under the contract of employment" and that any future impact of the challenged decision were "hypothetical and not ripe for determination" (see paras. 32 and 33, respectively).

Consequently, as the situations of the present case and *O'Brien* are not comparable, *O'Brien* has no precedential effect in the present case. The additional "parallels" referred to by the Respondent are therefore also irrelevant. The Tribunal further observes that—without making any additional findings in this regard—the contested decision in the present case is one that may, possibly, be reviewed by the Dispute Tribunal under the consistent jurisprudence of the Appeals Tribunal (see, for instance, *Nwuke* 2010-UNAT-099, *Nadeau* 2017-UNAT-733, *Okwir* 2022-UNAT-1232, and *Yavuz* 2022-UNAT-1291).

Decision Contested or Judgment/Order Appealed

The "[d]ecision to close complaints of harassment and abuse of authority without proper investigation, [and a] possible other decision to close a complaint following investigation".

Legal Principle(s)

The Appeals Tribunal has held that the Dispute Tribunal may consider the receivability of an application as a preliminary matter before reviewing the merits of the case (see, for instance, *Pellet* 2010-UNAT-073).

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Pumpyanskaya

Entity

DGC

Case Number(s)

UNDT/NY/2022/001

Tribunal

UNDT

Registry

New York

Date of Judgement

22 Jun 2023

Duty Judge

Judge Adda

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abuse of authority

Disciplinary matters / misconduct

Applicable Law

Administrative Instructions

Related Judgments and Orders

2023-UNAT-1333

2010-UNAT-073

2010-UNAT-099

2017-UNAT-733

2022-UNAT-1232

2022-UNAT-1291