

UNDT/2024/036, O'Mullane

UNAT Held or UNDT Pronouncements

The Tribunal noted that, as stipulated in sec. 5.1 of ST/AI/2017/1, “OIOS retains the ultimate authority to decide which cases it will consider and shall determine whether the information of unsatisfactory conduct received merits any action”.

Accordingly, the Tribunal found that the contested decision was lawful.

As the decision by OIOS not to open an investigation was found to be a lawful exercise of the Administration’s discretion, there was no basis for the referral of this case to the Secretary-General for possible action to enforce accountability.

Decision Contested or Judgment/Order Appealed

The Applicant contested the “decisions of the Office of Internal Oversight Services (“OIOS”) to decline to open an investigation into his report of possible harassment and abuse of power against the [United Nations] Controller”.

Legal Principle(s)

The Appeals Tribunal has held that the investigation of management and administrative practices or of disciplinary cases is usually a matter within the discretion of the Administration. (See, for instance, *Benfield-Laporte* 2015-UNAT-505, para. 37 and *Abboud* 2010-UNAT-100, para. 34).

A staff member has no right to compel the Organization to conduct an investigation, unless such a right is granted by the Staff Regulations and Rules of the United Nations (See, for instance, *Nwuke* 2010-UNAT-099, paras. 3, 28, 30 and 36; *Ross* 2023-UNAT-1336, para. 24).

The Appeals Tribunal has held that when reviewing the validity of the Administration's exercise of discretion in administrative matters, the role of the Dispute Tribunal is to determine whether the contested decision is legal, rational, procedurally correct, and proportionate. It is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Administration amongst the various courses of action open to it. Nor is it the role of the Dispute Tribunal to substitute its own decision for that of the Administration (see, for instance, *Barbulescu* 2023-UNAT-1392, para. 54; *Kanbar* 2021-UNAT-1082, para. 30; *Sanwidi* 2010-UNAT-084, para. 42).

Outcome

Dismissed on merits

Outcome Extra Text

The Applicant's oral motion for the joinder of his two cases was deemed moot as Case No. UNDT/NY/2023/019 had already been adjudicated separately via Judgment No. UNDT/2024/025.

Full judgment

[Full judgment](#)

Applicants/Appellants

O'Mullane

Entity

UN Secretariat

Case Number(s)

UNDT/NY/2023/020

Tribunal

UNDT

Registry

New York

Date of Judgement

19 Jun 2024

Duty Judge

Judge Tibulya

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Discretionary authority
Bias/favouritism
Scope of investigation
Restructuring
Referral for accountability
Discrimination and other improper motives
Investigation
Reassignment or transfer

Applicable Law

Administrative Instructions

- ST/AI/2017/1

Secretary-General's bulletins

- ST/SGB/2019/8

Related Judgments and Orders

2015-UNAT-505

2010-UNAT-100

2011-UNAT-182

2013-UNAT-335

2020-UNAT-998

2010-UNAT-073

UNDT/2024/025

2010-UNAT-099

2023-UNAT-1336

2023-UNAT-1392

2021-UNAT-1082

2010-UNAT-084

UNDT/2017/021

2024-UNAT-1439-Corr.1

2023-UNAT-1357