



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2022/108

Judgment No.: UNDT/2023/041

Date: 30 May 2023

Original: English

Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

HUMACKIC

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Nicole Wynn, AS/ALD/OHR, UN Secretariat

Fatuma Mninde-Silungwe, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant serves as a Procurement Officer at the United Nations Interim Force in Lebanon (“UNIFIL”) at the FS-6 level. In her application dated 20 October 2022, she challenges a decision of the Head of Mission/Force Commander (“HoM/FC”) to laterally reassign her from the position of Contracts Management Officer at the FS-6 level to her present post at the same level.

2. The Respondent filed his reply on 24 November 2022, contending that the application is without merit.

3. On 22 March 2023, the Tribunal held a case management discussion (“CMD”) pertaining to management of the present case and a related case, UNDT/NBI/2022/076, whereby the Applicant was contesting administrative inaction regarding her complaint of harassment. The Applicant was informed of the impermissibility of having two parallel applications regarding the outcome of the same process and of the possibility to have her claim for compensation considered in the present case.

4. On 24 March 2023, Case No. UNDT/NBI/2022/076 was dismissed as not receivable.

5. By Order No. 064 (NBI/2023) dated 27 March 2023, the Tribunal: (i) admitted in the present case evidence submitted in Case No. UNDT/NBI/2022/076; and (ii) directed the parties to file further submissions, which they did on 29 and 30 March 2023, and on 22 and 23 May 2023. The parties did not request a hearing.

Facts

6. On 1 November 2009, the Applicant joined UNIFIL as a Budget and Finance Assistant at the FS-5 level. She was promoted to the Contracts Management Officer position at the FS-6 level on 1 August 2018.¹

¹UNDT/NBI/2022/108, reply, page 2, para. 3.

7. According to the Applicant, since 2018, she was subjected to public humiliation and demeaning comments denigrating her ethnicity, professionalism, and performance by her First Reporting Officer (“FRO”), the Chief of Acquisitions and Contract Management.²

8. On 22 May 2019, the Applicant wrote to the UNIFIL Chief Human Resources Officer (“CHRO”) requesting informal mediation with her FRO.³ On 23 May 2019, the Applicant expressed to her second reporting officer (“SRO”) issues she had with her FRO and submitted a complaint of harassment.⁴

9. For nearly eight months, until December 2019, mediation efforts were undertaken without result, as the Applicant's complaints were passed from one office to another.⁵

10. On 24 June 2020, the Applicant filed a complaint with the Assistant Secretary-General, Office of Human Resources (“ASG/OHR”), alleging harassment and abuse of authority against her FRO. The ASG/OHR referred the matter to the Office of Internal Oversight Services (“OIOS”) for investigation as an ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority) complaint.⁶

11. On 24 August 2020, the OIOS referred the Applicant’s case to the Mission for resolution.⁷

12. By letter dated 12 March 2021, the HoM/FC wrote to the Applicant informing her that in consultation with the Regional Conduct and Discipline Section (“RCDS”), it was determined that the matter involved unsatisfactory conduct on the part of the Applicant’s FRO that did not amount to misconduct under ST/AI/2017/1

² UNDT/NBI/2022/076 application, para. 5.

³ UNDT/NBI/2022/108, application, annex 5a titled *email to HR 22.05.2019*. Reply, page 2, para. 4.

⁴ UNDT/NBI/2022/076, application, para. 6.

⁵ UNDT/NBI/2022/076, application, annex 10 titled *emails to and from DMS*; UNDT/NBI/2022/108, application, annex 7 titled *email sent to HR.30.07.2019* and annex 8 titled *request for continuation of informal mediation*; UNDT/NBI/2022/108, reply, page 3, para. 5.

⁶ UNDT/NBI/2022/076, application, annexes 1a and 1b; reply, page 3, para. 9

⁷ UNDT/NBI/2022/076, reply, page 3, para. 10.

(Unsatisfactory conduct, investigations, and the disciplinary process), and contained issues that could best be addressed through performance management.⁸ The HoM/FC decided to take administrative action that included asking the UNIFIL Chief Supply Chain Management (“CSCM”) to resume efforts to informally resolve the matter and ensure that both parties fully understand the operational expectations within the Section.⁹ The HoM/FC informed the Applicant that he considered the matter was closed.¹⁰

13. On the same day, 12 March 2021, the HoM/FC issued a reprimand to the Applicant’s FRO and cautioned the FRO against retaliation.¹¹

14. On 3 November 2021, the Applicant addressed a complaint to the HoM/FC referring to continuing incidents that she termed harassment and seeking protection against retaliation by changing reporting lines.¹²

15. By email dated 12 November 2021, the Director of Mission Support (“DMS”) responded, on behalf of the HoM/FC, that it was not clear whether the Applicant’s email,

[...] raises new issues that were not covered in the first complaint or contains conduct and discipline-based issues that go beyond management and/or performance parameters. If you do have new specific issues to raise, please do so formally either through C/SCM, OiC RCDS or OiC HR.¹³

16. On 23-24 November 2021, the Applicant submitted to the RCDS a request for protection against retaliation and what she termed as the “second formal complaint” against her FRO.¹⁴

⁸ UNDT/NBI/2022/076, reply, annex R/2, para. 3 and application, annex 11.

⁹ UNDT/NBI/2022/076, reply, annex R/2, para. 4 and application, annex 11.

¹⁰ UNDT/NBI/2022/076, reply, annex R/2, para. 7.

¹¹ Reply, page 3, para. 8; Respondent’s response to Order No. 064 (NBI/2023), annex R/8 and R/9
UNDER SEAL

¹² UNDT/NBI/2022/108, application, annex 1 titled *UNDT 20.10.22 Brief with Annexes_1*;
UNDT/NBI/2022/076, application, annex 12 titled *Email sent to HoM on 03. 11.2021*.

¹³ UNDT/NBI/2022/108, application, annex 13 titled *email from DMS 12.11.2021*.

¹⁴ UNDT/NBI/2022/108, application, annex 2b titled *submission of a request for protection against retaliation to RCDU on 23. 11.2021*.

17. On 23 November 2021, the Applicant met with the RCDS and raised issues related to her working environment.¹⁵ On 25 November 2021, the Applicant met with the DMS in order to discuss her complaint.¹⁶

18. A meeting between the CHRO, the Human Resources Section (“HRS”), the Applicant and her FRO was held on 29 November 2021. The HRS suggested the involvement of the Ombudsman’s Office.¹⁷

19. In parallel, the Officer-in-Charge (“OiC”) RCDS held meetings with the Applicant and her FRO. In a report dated 9 December 2021, the OiC-RCDS informed the DMS that, in her assessment, the Applicant’s complaint did not amount to new allegations of misconduct but rather described a continuation of the conflict between the two staff members, and that the allegations, if substantiated, would constitute basis for management and performance concerns, but would not amount to harassment or abuse of authority nor otherwise merit disciplinary action. The OiC-RCDS’ assessment was that any further mediation would be futile. She recommended suspension of the supervisory relationship between the two staff members and that allegations raised by both staff members be addressed by way of administrative action.¹⁸ The Applicant was informed of the recommendation.¹⁹

20. In spite of the OiC-RCDS’s recommendation, the DMS requested the United Nations Ombudsman and Mediation Services (“UNOMS”) to resolve the conflict by mediation.²⁰ In December 2021 and January 2022, a Senior UNOMS Conflict Resolution Officer in Vienna carried out mediation sessions with the conflicted parties. The parties refused to sign a mediation agreement, they were, however, unanimous as to that their working relation was untenable.²¹

¹⁵ UNDT/NBI/2022/076, application, annex 2d titled *emails to and from RCDU*.

¹⁶ UNDT/NBI/2022/108, application, annex titled *MEU letter chronology of events 27.04.2022*, para. 23.

¹⁷ *Ibid.*, para. 24.

¹⁸ UNDT/NBI/2022/076, reply, annex R/4.

¹⁹ UNDT/NBI/2022/076, application, annex 2d titled *email from RCDU on case status 25.01.2022*; annex 2c titled *Meeting Follow-up email from RCDU 06.12.2021*.

²⁰ UNDT/NBI/2022/076: application, annex 14; reply, page 3, para. 12.

²¹ UNDT/NBI/2022/076: application, annex 14.

21. On 28 January 2022, the UNOMS recommended that the HoM/FC “[...] separate the two staff members from the supervisor and supervisory relationship”.²²

22. According to the Respondent, HRS presented two options to the DMS on 11 February 2022: (i) reassignment of one party; or (ii) reassignment of both parties. On 13 April and 10 May 2022, the DMS, the CHRO, and the CSCM held meetings to discuss the two options presented by UNIFIL HRS. They supported the option to reassign at least one staff member from the Contract Management Unit to a different section within UNIFIL.²³ Following the meeting, it was decided to reassign the two staff members from the Contract Management Unit to other sections within the Mission.²⁴

23. On 13 May 2022, the DMS met separately with the parties to advise them on the possibility of reassignment.²⁵

24. The HoM/FC wrote to the Applicant on 2 June 2022, informing her of his decision to reassign her to the Procurement Section with the function of Procurement Officer at the FS-6 Level.²⁶

25. On 10 June 2022, the Applicant requested management evaluation of the reassignment decision.²⁷

26. From 1 July 2022, the Applicant's FRO was reassigned to a Chief Contingent Owned Equipment position at the P-4 level. The Applicant was laterally reassigned to the Procurement Section with the post she had encumbered.²⁸

27. In the following days, the Applicant met with the Chief of the Procurement Section to discuss about a possible modification of the job description that would best

²² UNDT/NBI/2022/076, application, annex 14 titled *email from Mr. Gang Li 28.01.2022*

²³ UNDT/NBI/2022/108, reply, para. 14.

²⁴ *Ibid.*, para. 15.

²⁵ *Ibid.*, para. 16 and para. 25.

²⁶ UNDT/NBI/2022/108, application, annex 2 titled *Contested decision Memo dated 02.06.22.*

²⁷ UNDT/NBI/2022/108, application, section VI, page 4, paras. 1 and 2.

²⁸ UNDT/NBI/2022/108, reply, page 4, para. 19.

use her experience in line with the audit recommendations.²⁹ She also wrote to the CSCM requesting information on her new job description and her status of reassignment. By email dated the same day, the CSCM advised the Applicant to address her request for clarification regarding her current status to her FRO and HRS.³⁰

28. From 8 July 2022, the Applicant proceeded on annual leave for nine days.

29. On 22 July 2022, the Applicant received the Management Evaluation Unit's ("MEU") response to her request for management evaluation which informed her that the contested decision had been upheld.³¹

30. She then requested for Certified Sick Leave ("CSL") which was approved until 11 November 2022.³²

31. On 14 November 2022, the Applicant returned from sick leave and refused to sign the Terms of Reference of her new assignment.³³

Submissions

The Applicant's case

32. The impugned decision is unlawful and tainted by improper motives resulting from a complaint under ST/SGB/2019/8 against the Applicant's FRO. The reassignment is neither in the Applicant's interest nor at the level of her capacities and experience. The Applicant submits that in her Inspira profile, the only associated titles for Contracts Management Officer are Supply and Requisitions Officers and

²⁹ *Ibid.*, page 5, para. 20.

²⁹ *Ibid.*, page 5, para. 22 and annex R/2.

³⁰ UNDT/NBI/2022/108, application, annex 1 titled *UNDT 20.10 22 Brief with Annexes_1, pages 2 and 3*.

³¹ UNDT/NBI/2022/108, reply, page 5, para. 22 and annex R/2.

³² UNDT/NBI/2022/108, reply, page 5, para. 21.

³³ UNDT/NBI/2022/108, reply, page 5, para. 21.

Acquisition Planning Officer.³⁴ Procurement Officer is a stand-alone job family while Contracts Management Officer is within the logistics job family.

33. The Applicant states that her *lateral reassignment* constitutes a change in functions, which involve certain prerequisites and clearances that the Applicant did not receive. It was inappropriate in light of the United Nations Procurement Manual, DOS/2020.9 dated 30 June 2020, which states at its para 2.3:

Procurement activities can only be undertaken by Procurement Officials, as the staff members responsible for the procurement process. The dedicated procurement of goods and services is carried out by professional staff with proper training, knowledge, and experience, or by administrative staff with the appropriate procurement expertise, training, and qualifications if approved by the ASG, OSCM. Only the relevant classified job descriptions should be utilized to recruit procurement officials, unless otherwise approved by the ASG, OSCM in advance.

34. Furthermore, the status of the Applicant's post is not clear, whether it is on loan, permanent move or to be reclassified. The Applicant did not receive notice on classification/reclassification as per ST/AI/1998/9 (System for the classification of posts).

35. The Applicant claims that the contested decision is not justified by operational needs and would not have happened if not for the unsatisfactory conduct of her FRO that led to her complaint.

36. As a remedy, the Applicant seeks rescission of the contested decision and moral damages resulting from the distress she suffered in the amount equivalent to three-years' salary.

³⁴ Applicant's Submission to Order No. 064 (NBI/2023) annex B3; Applicant's Submission to Order No. 064 (NBI/2023), annex B4.

The Respondent's case

37. The application should be dismissed because the impugned decision is legal and rational.

38. Staff regulation 1.2(c) provides that staff members can be assigned by the Secretary-General to any activities of the Office. Section 2.5 of ST/AI/2010/3 (Staff selection system) provides that Heads of departments/offices (“HODs/HOs”) and Heads of Mission can transfer staff within their offices, departments or missions. Section 3.2(a) of ST/SGB/2019/8 foresees the possibility for the Organization to take appropriate measures to promote a harmonious work environment.

39. For over four years, the Mission worked to resolve the acrimonious working relationship between the Applicant and her supervisor. The conflict between the Applicant and her supervisor was negatively affecting eleven other staff members working in the same Unit. Reassigning both staff members was both fair and, in the Mission’s best interest, because reassigning one staff member would have resulted in the sense of one staff member prevailing over another. The Mission acted within the scope of its discretion and in accordance with its obligation to promote a harmonious working environment.

40. The requirement to complete mandatory training courses for the Procurement Officer position does not make the Applicant incompetent to perform its functions. The courses are only a prerequisite for all qualified staff members in charge of committing or certifying funds on behalf of the United Nations. The Applicant is rostered for Contracts Management Officer positions at the FS-6 level, which qualifies her for positions of Procurement Officer and Acquisition Planning Officer at the FS-6 level requiring related skills.

41. The Applicant’s contractual position is not affected by her reassignment because she continues to serve on a continuing appointment on the same post and grade. There is no requirement of classification of the post. Whereas the Applicant’s post is on loan, in the event that the Mission needs the position in the Procurement Section

beyond the 2023/2024 budget year, the post may be regularized as part of the Procurement Section through the budget process for the 2024/2025 budget year. Contrary to her claims, this reassignment has a positive impact on the Applicant's professional career development because it is an opportunity to enhance and diversify her skills as recommended by the new approach to staff mobility (A/75/540/Add.1, Report of the Secretary-General).

Considerations

42. Events described by the Applicant gave rise to two formal complaints, alleging workplace harassment by her supervisor. The complaint dated 23 May 2019 and repeated in a memorandum of 24 June 2020 ("first complaint") resulted in a decision of 12 March 2021, whereby the Applicant's supervisor was reprimanded, their superior officer tasked with informally resolving the conflict; otherwise, the matter was closed. This decision was not appealed by the Applicant and will not be evaluated by the Tribunal. The facts underpinning this decision are referred to only as background.

43. The second complaint dated 24 November 2021 ("second complaint"), resulted in a report from the RCDS dated 9 December 2021 according to which the matter merited managerial action only. In June 2022, it occasioned the reassignment decision impugned in this case.

44. The fact that the 24 November 2021 submission from the Applicant constituted a formal complaint transpires clearly from the surrounding correspondence: the fact that the first matter had been formally "closed" through a memorandum of 12 March 2021; the passage of time since the March 2021 decision; the email from the DMS of 12 November 2021 directing the Applicant - had she wanted to pursue the matter - to file a formal complaint; the resulting email from the Applicant to the OiC-RCDS terming her grievance as a "formal complaint"; the fact that it entailed an inquiry and a report titled "Allegations of Prohibited Conduct: RCDS Assessment and Recommendation"; the fact that, as admitted by the Respondent³⁵, it contained new

³⁵ UNDT/NBI/2022/076: Respondent's response to Order No. 061(NBI/2023), para. 10.

allegations; finally – the fact that it was admitted by the Respondent in the reply in Case No. UNDT/2022/076³⁶, which states “the Applicant raised another formal complaint [...]”. A subsequent denial by the Respondent³⁷ that the Applicant had raised a second complaint is unmerited in light of the documented facts.

45. The propriety of the impugned decision must, therefore, be evaluated in the context of ST/SGB/2019/8 and related administrative issuances.

46. The Tribunal finds that the procedural steps mandated by ST/SGB/2019/8 were not accurately followed.

47. First, the Mission failed to forward the Applicant’s second grievance to OIOS. In accordance with section 5.4:

Possible prohibited conduct shall be reported in accordance with section 4 of ST/AI/2017/1 either to the responsible official, with a copy to the Office of Internal Oversight Services (OIOS), or to OIOS. If a report of possible prohibited conduct is made to the responsible official, the responsible official shall forward the report of possible prohibited conduct to OIOS and acknowledge receipt of the report.

ST/AI/2017/1 section 5 provides:

5.1 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, and if so, is better handled by the responsible official or by OIOS. OIOS may at any time decide that a case is better handled by it.

48. The Respondent explains that informing OIOS was redundant because the Mission considered the November 2021 complaint “as part and parcel of complaints the Applicant previously raised in June 2020 that had already been referred to OIOS, and which OIOS had already referred back to the Mission for resolution” and that it “did not allege conduct and discipline-based issues that went beyond management and/or performance parameters.” The Tribunal considers that it was not the Mission’s

³⁶ UNDT/NBI/2022/076: reply, para. 13.

³⁷ UNDT/NBI/2022/076: Respondent’s response to Order No. 061 (NBI/2023), para. 8.

call to decide about forwarding the harassment and retaliation complaint to OIOS or not, no matter the likelihood of it being again referred to the Mission. The obligation to inform OIOS is expressed in categorical terms and not as a discretionary matter. The Tribunal concedes, nevertheless, that this formal default may have been immaterial for the outcome.

49. Second, the Mission failed to properly address the Applicant's allegations. In accordance with ST/SGB/2019/8 section 5.5

(i) The affected individual and the alleged offender shall be informed on a strictly confidential basis of the outcome of the matter [...] if the responsible official has taken managerial or administrative measures.”

50. The duty to inform of the outcome must be seen as corresponding to the staff member's right to be so informed. As affirmed by the Appeals Tribunal in the context of ST/SGB/2019/8, “[t]here is “a contractual entitlement to request that [the complainant's] allegations are addressed”³⁸ and, in the context of a similarly worded regulatory policy “[t]hat right, and the efficacy of the Policy, would be meaningless if it did not include the right or expectation to a proper and reasonable consideration of the complaint for the purpose of determining whether to produce an investigation report.”³⁹ This is not to say that the Mission should have conducted an investigation⁴⁰ nor that the conclusion of the RCDS - implicitly adopted by the Mission - according to which allegations expounded by the conflicted staff members had not supported a finding of misconduct, in particular harassment or retaliation⁴¹, had amounted to inappropriate use of discretion. However, the Applicant's right to be informed of the outcome required communication - at minimum in general terms - of the findings regarding the allegations and a demonstration of a rational connection of the ultimate outcome with these findings. This was not done and justifiably may have caused the

³⁸ *Luvai* 2014-UNAT-417, para. 62.

³⁹ *Ross* 2023-UNAT-1336, para. 23.

⁴⁰ As per UNAT's jurisprudence, the decision to close a complaint of alleged prohibited conduct is discretionary in nature *Sanwidi* 2010-UNAT-804, para. 42; *Nadeau* 2017-UNAT-733, para. 33.

⁴¹ UNDT/NBI/2022/076, reply, annex R/4: Regional Conduct and Discipline Section, inter Office memorandum dated 9 December 2021, para. 13.

Applicant to feel dismissed, or even penalised, by a dry announcement of her own reassignment.

51. The third matter concerns the choice of measure applied to the Applicant. The Tribunal notes that ST/SGB/2019/8 contemplates reassignment only as an interim measure (section 6.10(b)). ST/AI/2017/1, to which ST/SGB/2019/8 refers, defines in Section 2.1:

[...]

(d) “Administrative measures” means an oral or written reprimand, reassignment and/or change of duties;

(e) “Managerial action” means an oral or written caution, warning or advisory communication, training, coaching and/or referral of the staff member to the Staff Counsellor;

Section 5.7 provides:

In cases where the responsible official decides not to initiate an investigation, the responsible Official should decide either to close the matter without further action or to:

(a) Take managerial action, without prior consultation with the staff member; and/or

(b) Issue a written or oral reprimand [...]

Section 5.7(b) suggests that reassignment is a measure to be applied after investigation. The same results from sections 7.5(b) and 9.1(b), which state that administrative measures are available after the conclusion of an investigation and the disciplinary process, respectively.

52. It is undisputed that there had been no allegation of unsatisfactory conduct on the part of the Applicant and that an investigation had not been conducted. There is, therefore, a question whether re-assignment may be applied by way of a managerial action notwithstanding the limiting wording of section 5.7 of ST/AI/2017/1.

53. The Tribunal finds that the response to this question is in the positive. Staff regulation 1.2(c) provides that staff members can be assigned by the Secretary-General to any activities of the Office. The reassignment of staff members comes within the broad discretion of the Organization to use its resources and personnel as it deems appropriate. This discretion cannot be fettered by a subordinate act which is ST/AI/2017/1. Rather, the issue lies in delegation of authority to decide reassignment and differentiating reassignment as a response to unsatisfactory conduct from reassignment for operational needs. Only the first case merits placing the record of reassignment on the personal status file.

54. The Tribunal is satisfied that as Head of Entity, the HoM/FC has delegated authority to reassign a staff member within UNIFIL under staff regulation 1.2(c).⁴² The Tribunal further finds that maintaining a harmonious work environment and the prevention of prohibited conduct is a valid operational reason for reassignment. It was confirmed by everyone involved in the process (DMS, OiC-RCDS, UNOMS as well as the conflicted staff members) that maintaining the existing supervisory relationship was untenable and that changing of the reporting lines was impossible within the structure of the Unit. Failure of the repeated mediation efforts demonstrated sufficiently that it was no longer reasonable to expect that either staff member would be able to move beyond their grudges and work cooperatively. The Tribunal agrees that the four-year acrimony must have contributed to a negative working environment for other staff members within the Acquisitions and Management Unit. It is also persuaded that, in the absence of misconduct and both staff members being equally intransigent and responsible for the perpetuation of the conflict, reassigning both staff members was both fair and in the Mission's best interest. It prevented creating a sense of one staff member prevailing over another, a potential demoralising effect of such a "triumph" or "defeat" on the persons involved as well as on other staff members, and a continuation of the acrimonious situation between the adversaries.

⁴² UNDT/NBI/2022/108, reply, annex R/3.

55. For the reasons stated and documented by the Respondent, the Tribunal accepts that the managerial action in relation to the Applicant was not disproportionate. The position in procurement to which the Applicant was reassigned was at the same level and commensurate with her qualifications, as evidenced by the fact that the Organization associates the job codes for Procurement and for Contracts Management Officer for purposes of roster selection⁴³ and the Applicant was rostered for a job of procurement officer.⁴⁴ By definition, rosters constitute a pool of candidates who have been assessed as suitable and endorsed by a central review body. The Applicant, moreover, listed experience in procurement-related work and training in her PHP.⁴⁵ As such, the Applicant's formal qualifications for the position are beyond dispute. That the position will require additional training, does not render the Applicant unqualified and the reassignment disproportionate. Moreover, possibilities to closer define the Applicant's tasks within the current office placement in a way that could meet her experience and reasonable expectations were not foreclosed.

56. There is no evidence of economic prejudice to the Applicant, as she remains a holder of a continuing appointment and serves on a budgeted post.

57. As pointed out by the Respondent, there was no requirement to obtain the Applicant's agreement to the reassignment.⁴⁶ The Applicant was aware of the recommendation to separate her and her FRO and had the opportunity to voice her concerns. However, it is for the Organization to determine whether reassignment is in its interest or not.⁴⁷

58. Finally, there is no evidence of an improper motive. To the contrary, for over four years the Mission had dedicated extensive time and human resources in an attempt to address the Applicant's grievance and manage her conflict with her supervisor.

⁴³ *Ibid.*, annexes R/5 and R/6.

⁴⁴ *Ibid.*, annex R/4.

⁴⁵ *Ibid.*, annex R/6.

⁴⁶ *Hepworth* 2015-UNAT-503, para. 26; *Silva* 2022-UNAT-1223, para. 77.

⁴⁷ *Rees* 2012-UNAT-266, para. 58.

59. In conclusion, despite the procedural shortcomings indicated in paragraphs 47-50 above, the impugned decision conforms with the law. Absent illegality, the question of compensation does not arise.

JUDGMENT

60. The application is dismissed.

(Signed)
Judge Agnieszka Klonowiecka-Milart

Dated this 30th day of May 2023

Entered in the Register on this 30th day of May 2023

(Signed)
Abena Kwakye-Berko, Registrar, Nairobi