



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2017/052/R1
Judgment No.: UNDT/2023/119
Date: 7 November 2023
Original: English

Before: Judge Margaret Tibulya

Registry: Geneva

Registrar: René M. Vargas M.

REILLY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Robbie Leighton, OSLA

Counsel for Respondent:

Jérôme Blanchard, LPAS, UNOG

Introduction

1. By application registered under Case No. UNDT/GVA/2017/052, the Applicant, a former Human Rights Officer in the Office of the High Commissioner for Human Rights (“OHCHR”), contested the:

- a. “Ongoing workplace harassment based on protected activity for reporting and objecting to wrongdoing by management”, including the decision to conclude an investigation of harassment only with managerial actions; and
- b. “Violation of staff member privacy rights and defamation of character”, including the related decision to state that her claims were found unsubstantiated in a press release.

2. By Judgment *Reilly* UNDT/2021/093, this Tribunal adjudicated the above-mentioned matter. The Applicant appealed this Judgment before the United Nations Appeals Tribunal (“UNAT”).

3. By Judgment *Reilly* 2022-UNAT-1309, the Appeals Tribunal partially reversed the above UNDT Judgment remanding specific issues for reconsideration.

4. The remanded case was registered under Case No. UNDT/GVA/2017/052/R1 and was assigned to the undersigned Judge on 3 April 2023.

Facts related to the specific issues that UNAT remanded

5. From 15 April 2015 to 31 July 2015, namely during the 2015-2016 performance cycle, the Applicant worked under the supervision of the Chief, Millennium Development Goals Section (“MDGS”), Development, Economic and Social Issues Branch (“DESIB”), who was the Applicant’s First Reporting Officer (“FRO” or “MD”), and of the Chief, DESIB, who was the Applicant’s Second Reporting Officer (“SRO” or “CM”), on a three and half months’ temporary assignment at the P-4 level.

6. On 20 July 2016, the Applicant filed a complaint of harassment and abuse of authority under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) against her above-mentioned FRO and SRO.

7. On 28 August 2016, the Applicant was informed that a fact-finding panel (“the Panel”) would be appointed to review her complaint. The Panel was appointed on 2 September 2016 by the then High Commissioner for Human Rights (“High Commissioner”), and consisted of the Chief, Monitoring Evaluation, Risk Management and Statistical Verification Division, Division of Conference Management, UNOG, and the Chief, Governance and Administration, Information and Communication Technology Services, UNOG.

8. The Panel interviewed nine persons, including the subjects of the allegations and the Applicant, who was interviewed twice.

9. The Panel submitted its report to the High Commissioner on 6 December 2016 (“investigation report”).

10. By memorandum dated 30 December 2016, the High Commissioner informed the Applicant, her FRO and her SRO of his decision to close the Applicant’s complaint with only managerial actions aimed at reminding the Applicant’s FRO and SRO of their duty “to ensure the proper and timely application of the performance management framework envisioned in ST/AI/2010/5 [(Performance Management and Development System)]”.

Procedural history

11. By Order No. 31 (GVA/2023) of 5 April 2023, the Tribunal convoked the parties to a case management discussion (“CMD”), which was held on 26 April 2023 with the participation, in person, of the Applicant, her Counsel and Counsel for the Respondent.

12. Following the CMD, by Order No. 47 (GVA/2023) of 8 May 2023, the Tribunal *inter alia*:

- a. Informed the parties that it did not deem it necessary to hold a hearing on the merits and call witnesses; and
- b. Requested the parties to file closing submissions, which they did on 19 May 2023.

Consideration

13. The Appeals Tribunal clearly defined the subject matter of the remanded case in *Reilly* 2022-UNAT-1309 (para. 115), namely the Applicant's allegations related to:

- a. A post in a different section where she had been recommended for a temporary position for which funding was withdrawn allegedly immediately upon her name being associated with the position;
- b. Her exclusion from meetings of the three-person team she worked with on topics included in her terms of reference, as well as from more general team meetings; and
- c. A failure of the Panel to properly investigate her complaint about “*ad hominem* attacks” against her, and that performance evaluation was conducted in bad faith in retaliation for a management evaluation request that she filed in connection with a recruitment.

14. In *Reilly* (at para. 120), the Appeals Tribunal also set the framework of this Tribunal's review in the following terms:

[To determine] whether there had been a proper and lawful investigation by the Panel into [the above] elements of [the Applicant's] allegation of harassment and abuse of authority, i.e. by examining for example whether the Panel had complied with its duty to interview relevant witnesses in terms of Section 5.16 of ST/SGB/2008/5, and [draw] its own reasoned conclusions from the investigation report and the evidence on file, whether there had been irregularities such as the failure of the Administration to address the

specific harassment complaints, and whether the specific incidents indicated in [the Applicant's] complaint could be reasonably characterized as breaches of the Organization's policies and regulations, meriting a finding of abuse of power and harassment, as the UNDT properly did with regard to [the Applicant's] allegations related to the recruitment for Vacancy 40485. Finally, the UNDT should [weight] the evidence with a view to determining whether the findings of the Administration on these specific issues were supported by the available evidence, namely that there was a rational connection between the information before the responsible official and the contested decision that there was no prohibited conduct requiring further action.

15. Drawing on the above, it is understood that the Tribunal is to ascertain whether:

- a. The Panel fully complied with its duty of investigating the complaints at issue in terms of ST/SGB/2008/5;
- b. The administrative decision arising from the process violated the Applicant's terms of employment; and
- c. The impugned administrative decision was improperly motivated.

16. ST/SGB/2008/5, in its relevant parts provides as follows:

5.16 The fact-finding investigation shall include interviews with the aggrieved individual, the alleged offender and any other individuals who may have relevant information about the conduct alleged.

5.17 The officials appointed to conduct the fact-finding investigation shall prepare a detailed report, giving a full account of the facts that they have ascertained in the process and attaching documentary evidence, such as written statements by witnesses or any other documents or records relevant to the alleged prohibited conduct. This report shall be submitted to the responsible official normally no later than three months from the date of submission of the formal complaint or report.

5.18 On the basis of the report, the responsible official shall take one of the following courses of action:

(a) If the report indicates that no prohibited conduct took place, the responsible official will close the case and so inform the alleged offender and the aggrieved individual [...];

(b) If the report indicates that there was a factual basis for the allegations but that, while not sufficient to justify the institution of disciplinary proceedings, the facts would warrant managerial action, the responsible official shall decide on the type of managerial action to be taken, inform the staff member concerned, and make arrangements for the implementation of any follow-up measures that may be necessary. Managerial action may include mandatory training, reprimand, a change of functions or responsibilities, counselling or other appropriate corrective measures. The responsible official shall inform the aggrieved individual of the outcome of the investigation and of the action taken;

(c) If the report indicates that the allegations were well-founded and that the conduct in question amounts to possible misconduct, the responsible official shall refer the matter to the Assistant Secretary-General for Human Resources Management for disciplinary action and may recommend suspension during disciplinary proceedings, depending on the nature and gravity of the conduct in question. The Assistant Secretary-General for Human Resources Management will proceed in accordance with the applicable disciplinary procedures and will also inform the aggrieved individual of the outcome of the investigation and of the action taken.

5.19 Should the report indicate that the allegations of prohibited conduct were unfounded and based on malicious intent, the Assistant Secretary-General for Human Resources Management shall decide whether disciplinary or other appropriate action should be initiated against the person who made the complaint or report.

17. The Tribunal is called to determine whether the staff member was granted due process rights, whether the investigators acted in an independent and impartial manner by considering all the circumstances of the case, and whether all relevant factors were taken into consideration or if any irrelevant matters were addressed.

18. The Applicant specifically alleges that in some instances key witnesses were not interviewed, and in others, relevant questions were not put to interviewees.

19. It is incumbent on the Tribunal to clarify that while the Applicant raised several complaints against several persons, only her FRO and SRO were subjects of the impugned investigation.¹ It follows therefore, that the Tribunal cannot rightly review the Panel's commissions, omissions, and decisions relating to persons other than the Applicant's FRO and SRO.

20. It is also made clear that in its review, the Tribunal will refer to each interviewee and each staff member referred to in the process by their initials.

The alleged withdrawal of funding for a position as soon as the Applicant's name was associated with it

21. The Applicant does not dispute the fact that the investigation report addressed this complaint as part of the "Other selection related allegations [which, as per the investigation report,] were impossible to corroborate".² She, however, maintains that the complaint was not properly investigated in that she was asked only one question, namely how she knew that the post was funded then cancelled. She also complains that though she provided names of two witnesses ("IG" and "JS") who would have been able to confirm this information, they were not interviewed about the issue.

22. The Respondent maintains that IG was not interviewed because the Applicant did not suggest her as a witness during her 13 September 2016 interview with the Panel.³ It is however on record that when the Applicant was asked how she received confirmation that the post was funded and then cancelled, she stated that IG, "told her and could confirm that along with [JS]" (cf. para. 88 of the investigation report).

23. Since, in the context of an investigation, only witnesses can confirm an assertion, it should have been and must be understood that the Applicant mentioned IG and JS as possible witnesses to the issue at hand.

¹ See the parties' agreed bundle of documents for the hearing held in June 2019, which they filed on 7 June 2019, p. 240.

² Ibid., p. 647.

³ Ibid., p. 656.

24. Considering that only JS and the Applicant's SRO, who were also named as possible witnesses to the issue at hand, were interviewed but not questioned about it,⁴ the conclusion that there was no goodwill in investigating this complaint is inescapable.

25. The Respondent further suggests that the Panel based the decision not to interview IG on information in two documents supplied by the Applicant. It is argued that after IG advised the Applicant on 23 October 2015 that "[t]he GTA request has not been approved. Happy to explain on Monday", and further noted "let's talk when you are back. Everything [is] a bit strange, to be honest",⁵ there is no indication that the Applicant later spoke to IG on the matter.

26. The absence of such indication, however, should, in fact, have been the reason for interviewing IG, since such interview would have enabled the Panel to gain better understanding about all issues surrounding the complaint from this witness' standpoint.

27. The Respondent cites as the basis for the Panel's finding, the interview statement of the Applicant's FRO that "he did a review of the process and wrote to [the Applicant] to prove the process had been done properly".⁶

28. While the Tribunal is cognizant of the principle that an investigation panel has a wide discretion in determining which witnesses it finds relevant (cf. *Abdellaoui* UNDT/2018/114; *Belkhabbaz* UNDT/2018/016), since the Applicant's FRO was one of the subjects of the investigation, the Panel having solely based a key finding on his statement runs counter to the very idea of an investigation. The ends of justice would have been best served had witnesses IG and JS been interviewed, since the Panel would have obtained a balanced view of the issues at hand before arriving at any conclusion.

⁴ Ibid., interview statement of witness JS at pp. 510-511 (paras. 62-64) and pp. 675-679 for that of the Applicant's SRO.

⁵ Ibid., p. 127.

⁶ Ibid., p. 678 (para. 29).

29. Sec. 5.16 of ST/SGB/2008/5 provides that the “fact-finding investigation shall include interviews with the aggrieved individual, the alleged offender and any other individuals who may have relevant information about the conduct alleged”.

30. The fact that IG, who may have had relevant information about the alleged conduct, was not interviewed, and that JS and the Applicant’s SRO were not questioned about the conduct in issue, supports a finding, as the Tribunal does, that there was a breach of the Applicant’s due process rights during the investigation of this complaint.

31. Based on the above, the Tribunal finds that there was no proper investigation of the complaint relating to the alleged withdrawal of funding for a position as soon as the Applicant’s name was associated with it, in terms of ST/SGB/2008/5.

The Applicant’s alleged exclusion from meetings of the three-person team she worked with on topics included in her terms of reference, as well as from more general team meetings

32. The Applicant alleges that she was excluded from meetings of the three-person team she worked with on topics included in her terms of reference. The specific meetings she cites are:⁷

- a. One attended by the High Commissioner, her FRO, and SAW (another staff member) to plan for the visit of the Irish Ambassador;
- b. One meeting directly with the Irish Ambassador;
- c. One meeting with the Friedrich-Ebert-Stiftung foundation (“FES”) to organize an event;
- d. Team meetings; and
- e. A meeting with SAW.

⁷ Ibid., p. 642 (para. 94) and p. 644 (para. 112).

33. In her statement, the Applicant alleges that her FRO admitted, in the presence of another staff member (SM) that, following her written complaint about her exclusion, he confirmed with two other staff members that such was true. She added that these two staff members explicitly told her FRO not to inform the Applicant about what they claimed about her, i.e., that she was difficult and they did not want to work with her.⁸

34. This, however, is a misrepresentation of what SM is recorded as having stated, which is that “there was discussion of [the Applicant’s] allegation that she had been excluded from meetings by the team. [The Applicant’s FRO] indicated that he had been told that meetings were stopped because the climate did not allow for it. He indicated that the team had decided not to consult [the Applicant] because of the impact of her reaction”.⁹

35. The Applicant, while denying that she is a bad team player who insults people by email, maintains that her FRO relied on the gossip she alludes to in para. 33 above, to exclude her from meetings and deny her information necessary to do her work.

36. She contends that her colleagues had meetings on all aspects of Sustainable Development Goals which were not even in their job description. On the contrary, those aspects were in her job description, yet she was not invited to the meetings.

37. The Applicant further alleges that a colleague with whom she previously had a good relationship also began to exclude her from meetings.¹⁰

38. The Tribunal notes that none of the eight witnesses (including the subjects of the investigation) was specifically questioned about the meetings alluded to in sub-paras. 32.a, b, and c above.

⁸ Ibid., p. 516 (para. 90).

⁹ Ibid., p. 331 (para. 10).

¹⁰ Ibid., p. 517 (para. 95).

39. General statements such as that the Applicant “wrote emails to management complaining about being excluded from meetings that did not exist”;¹¹ that she “was consistently included in meetings, even though it was difficult to work with her”;¹² that “there were no meetings at which the [A]pplicant was not invited”; that “there were one or two meetings to have an informal discussion organized by email: once an email was sent at 9:30 for a meeting at 10:00 and [the Applicant] claimed they did not give her any notice in order to exclude her”; “[the Applicant] is a very paranoid person and thinks that everybody wants to exclude her if she is not copied in an email”;¹³ and that “there was no prejudicial action to exclude anyone in particular”;¹⁴ do not, by any standards, serve as a response to the Applicant’s specific complaint regarding the three meetings.

40. The closest a witness (“GB”) came to supplying the requisite specificity was when she stated that the Applicant “started to make [claims about being excluded from meetings] more forcibly when a meeting happened when [she] was on a mission in New York. The meeting was overdue, so [the Applicant’s FRO] asked [GB] to do it. More relevant colleagues for the meeting were around [and] the idea was not to exclude her”.¹⁵

41. GB also conveyed to the Panel that “[t]here was one other meeting that [the Applicant] was not on the electronic invite [because she] was off sick after a mission, and [the witness] did not want to make her feel that she had to come back to work” and that “the meeting was a team catch up only”.¹⁶ The witness further stated that she informed another colleague that the Applicant had not been invited electronically to the meeting, and asked the said colleague that if he were to see the Applicant the next morning, he should tell her about the meeting.

¹¹ Ibid., p. 512 (para. 67).

¹² Ibid., p. 513 (para. 72).

¹³ Ibid., pp. 508-509 (paras. 49-54).

¹⁴ Ibid., p. 505 (para. 34).

¹⁵ Ibid., p. 512 (para. 67).

¹⁶ Ibid., para. 71.

42. In the Tribunal's view, GB's statements cited above cannot be the basis for a finding that the Applicant was not excluded from the three meetings in question.

43. There is therefore no evidence to contradict the Applicant's assertion that the three meetings took place and that she was excluded from them. The Panel's conclusion regarding the three meetings was without basis.

44. The fact that witnesses were not specifically questioned about the three meetings in question supports a finding that the Panel failed to comply with sec. 5.16 of ST/SGB/2008/5, and that there was a breach of the Applicant's due process rights during the investigation of the complaint connected to said meetings.

The alleged exclusion from general team meetings.

45. Contrary to the Applicant's assertion that the Panel did not conduct a proper investigation of this complaint, there is evidence that the complaint was properly investigated.

46. Some of the responses to the Panel's questions were recorded as follows:

Team meetings did not take place because the Applicant had problems working as a team. This had been one of the most intensive work periods of the fluid and very small team. It was therefore normal that on a day-to-day basis two people would meet, then another two, etc. She had problems working as a team;¹⁷ due to team dynamics with the Applicant's aggressive conduct, the team productivity was lower, everybody started working individually and sharing things by mail to avoid confrontation with the Applicant;¹⁸ on 15 June, staff members complained about the Applicant's aggressive behaviour;¹⁹ the Applicant's attitude would make others feel like not wanting to meet with her, or even come to work. There were no meetings at which the Applicant was not invited. The Applicant told SAW that she tapes meetings with hidden wires, which is very intimidating;²⁰ the Applicant has problems working with others, and she makes friends with only a few people. BEA preferred to provide her with individual assignments;²¹ the

¹⁷ Ibid., pp. 504 and 508 (paras. 30, 34 and 37).

¹⁸ Ibid., pp. 511 and 513 (paras. 65 and 72).

¹⁹ Ibid., p. 501 (paras. 22 and 35).

²⁰ Ibid., pp. 508-509 (paras. 49-54).

²¹ Ibid., p. 510 (para. 59).

Applicant's other colleagues were trying to stay away from the Applicant, given the nature of her interactions with them. Her comments were regularly very aggressive. The body language was aggressive. Her face would change. She told a colleague that she had recorded her boss in a meeting. She also made a request to record the final ePerformance discussion. Over the course of those 3 months, they gradually stopped having any communication. She would come to the office and shut the door. The Applicant was asked many times for a meeting to discuss the problems with interactions with colleagues on the team, but the meeting never happened;²² the Applicant's demeanour and interaction were harsh, shattered, and emotional.²³

47. The Applicant's complaint that the Panel did not ask questions about specific team meetings ignores the fact that she, in the first place, did not reference any specific team meeting, for example by date or subject, to give the Panel clarity about her complaint. The questions which were put to the witnesses therefore followed the trend set by the Applicant, and therefore elicited the right responses under the circumstances.

48. The Applicant suggests that the Panel's finding that "less and less team meetings appeared to be held" meant that instead of the team of three meeting, SAW and GB would meet to her exclusion, which in her view, supports the complaint that she was excluded.

49. It is obvious however that neither SAW and GB nor witnesses who stated that SAW and GB used to meet considered such meetings as team meetings. This is especially so since the team comprised three persons (SAW, GB, and the Applicant). The evidence that SAW and GB would meet, and the Panel's conclusion do not therefore contradict the position that team meetings (i.e., three-person meetings) did not take place, and that the Applicant was therefore not excluded.

²² Ibid., pp. 506-508 (paras. 40-48).

²³ Ibid., p. 503 (para. 30).

50. Based on the above, the Tribunal finds that the complaint that the Applicant was excluded from team meetings was properly investigated in terms of ST/SGB/2008/5.

51. The Panel's conclusion that the Applicant's complaint of being systematically excluded from "accountability" meetings was not corroborated by her examples or by witness statements²⁴ was properly arrived at.

A meeting with SAW

52. It is recalled that SAW was not a subject of the impugned investigation.²⁵ The Applicant does not even furnish details (such as the date, place, and subject) of the meeting she refers to in her complaint. The Panel, following that lead put general questions to witnesses, and obtained the evidence outlined in para. 46 above.

53. SAW's statement was that the Applicant's attitude would make others feel like not wanting to meet with her, or even come to work. There were no meetings at which she was not invited. SAW further stated that the Applicant admitted to taping meetings with hidden wires, which SAW found very intimidating.²⁶

54. Since SAW was not a subject of the impugned investigation, and the Applicant did not substantiate her claim, the Tribunal finds that the Applicant's complaint is without basis.

55. The Panel's conclusion that the Applicant's complaint was not corroborated by examples or by witness statements²⁷ was properly arrived at.

²⁴ Ibid., p. 522.

²⁵ Ibid., p. 240.

²⁶ Ibid., p.509 (para. 56).

²⁷ Ibid., p. 522.

“Ad hominem attacks”, verbal abuse, and gender-based remarks

56. The Applicant references 13 personal and *ad hominem* attacks she alleges were not properly investigated by the Panel.²⁸ The Tribunal will consider them in turn below.

The alleged spreading of untrue malicious rumours, gossip, or innuendo (that SAW and GB shared with MD who allegedly based performance evaluations on) and yelling (SAW)

57. In this respect, the Applicant maintains that her complaints that SAW and GB made a false report to MD that she (Applicant) had shouted, and that she never had the opportunity to defend herself were not investigated by the Panel.²⁹

58. The Panel, however, obtained MD’s statement confirming that on 15 June 2015, staff members complained about the Applicant’s aggressive behaviour.³⁰ SAW confirms that she made the report, and explains that in a meeting, the Applicant accused her of shouting at her. According to SAW, she would not normally shout, but given that the Applicant raised her voice, SAW might have raised her own to the same level as the Applicant’s.³¹

59. GB states that the Applicant’s conduct was very hostile towards her, and that in a discussion in the coffee shop, the Applicant and SAW raised voices in an inappropriate way.

60. CM stated that in meetings, the Applicant’s demeanour and interactions were “harsh, shattered and emotional” and that “peers complained about [the Applicant’s] intimidating interactions and bullying”. CM also stated that the Applicant informed him that she had submitted a complaint against a supervisor.³² He further asserted that the Applicant was emotional, and that he

²⁸ Ibid., p. 298.

²⁹ Ibid., p. 643 (para. 102).

³⁰ Ibid., p. 627 (para. 25).

³¹ Ibid., p. 634 (para. 55).

³² Ibid., pp. 676-677 (paras. 6-7).

initially thought that she had been victimised but found that her claims were unfounded.³³

61. JS and SM stated that they never witnessed any situation where the Applicant was abused.³⁴

62. Based on the above evidence, the complaint that the Panel did not properly investigate this complaint is without basis. The Panel's conclusion that the complaint was not corroborated by the examples the Applicant provided or by witness statements was valid, given that the weight of evidence tilted towards the Applicant's own participation in the conduct forming the basis of her complaint.

63. The decision to close this complaint was therefore based on available evidence.

Gender-based remarks

64. The Applicant complains about gender-based language from MD and NF, such as aggressiveness, comments about her being difficult and NF's comments about her tone.³⁵ MD dismissed the Applicant's complaints of heavily gender-based language alleging that it was a communication issue and a personality conflict, and that the Applicant was oversensitive or was imagining things. The Applicant also asserts that *ad hominem* attacks from SAW, NF, and MD included gender-based language, alleging that she was aggressive, difficult, and remarks about issues related to her tone. She also alleges that MD even claimed to be able to read the tone of an email from her.³⁶

65. According to the Panel, "it is clear from the statements of all subjects and witnesses that [the Applicant] is particularly sensitive to the possibility of remarks made by colleagues constituting verbal abuse and gender-based remarks".

³³ Ibid., p. 629 (para. 31).

³⁴ Ibid., p. 696 (para. 17) and p. 705 (para. 21).

³⁵ Ibid., p. 516 (para. 96).

³⁶ Ibid., p. 518 (paras. 103-104).

66. The Panel also noted that “the examples that were raised by [the Applicant] and commented in some cases by witnesses, did not, in the consideration of the Panel, constitute verbal abuse and gender-based remarks. The Panel could easily transpose any of the raised examples in comparable work situations to consider that they appeared to have been misunderstood by [the Applicant] to constitute more than they actually represented”.

67. The Tribunal considers that the Panel made the above comments after a thorough analysis of the evidence on record. Its conclusion that the accusation was not corroborated by examples that the Applicant provided or by witness statements was therefore not out of place.

68. The complaint that the Panel did not properly investigate the Applicant’s claim that gender-based remarks were directed at her, in terms of ST/SGB/2008/5, is without merit.

Trivialisation of a legitimate complaint of exclusion as a “communication issue” or “personal conflict”, refusal to receive evidence, accusation of being oversensitive, and imagining things

69. None of the witnesses who were interviewed including one subject of the complaint, MD,³⁷ was questioned about this complaint. This represents a failure to investigate it.

70. The fact that witnesses were not specifically questioned about this complaint supports a finding that the Panel failed to comply with sec. 5.16 of ST/SGB/2008/5, and that there was a breach of the Applicant’s due process rights during the investigation of this complaint.

³⁷ Ibid., pp. 501-503, MD’s interview statement.

Statements that the Applicant is aggressive and difficult, and comments about her “tone”

71. The specific of this complaint is that NF would respond to substantive issues with personal, gender-based comments, notably about the Applicant’s tone. If she spoke too fast for him, he claimed she was aggressive.³⁸

72. The Tribunal notes, however, that the Applicant and witnesses including MD, SAW, GB, NF, and CM were questioned about this issue and recorded their responses as follows.

73. According to SAW, the Applicant was verbally forceful and used an aggressive tone.³⁹ GB stated that the Applicant was hostile towards her and that they had a difficult working relationship.⁴⁰ GB reported to MD aggressive behaviour from the Applicant.⁴¹ NF stated that the Applicant’s body language was very aggressive, and that over the course of the three months they gradually stopped having any communication. She would come to the office and shut the door.⁴² CM stated that the Applicant’s demeanour and interactions were harsh, shattered and emotional. Further, that her peers complained about her intimidating interactions, such as bullying.⁴³

74. There is abundant evidence therefore, that this complaint was properly investigated. The above witness’ statements contradict any assertion to the contrary.

75. The fact that available evidence re-affirmed the Applicant’s peers’ perception of her does not constitute evidence that the complaint was not properly investigated.

³⁸ Ibid., p. 517 (para. 95).

³⁹ Ibid., p. 508 (para. 50).

⁴⁰ Ibid., p. 511 (para. 65).

⁴¹ Ibid., p. 502 (para. 25).

⁴² Ibid., pp. 506-507 (paras. 43-44).

⁴³ Ibid., pp. 503-504 (para. 30).

76. The Tribunal finds that the Panel complied with sec. 5.16 of ST/SGB/2008/5, and that there was a rational connection between the information before the responsible official and the contested decision that there was no prohibited conduct against the Applicant requiring further action.

Belittling the Applicant's position on reference to "the family" as being oversensitive due to her sexual orientation, and intimidation/threats that the Applicant would not be recommended for extension if she continued to raise substantive issues

77. The Applicant's complaint is that SAW said that she (the Applicant) was oversensitive to the issue of the Russian delegation wanting to include language using the term "the family", which is commonly known in the human rights circles as being used to justify anti-LGBT behaviour.⁴⁴ The Applicant adds that SAW said that if the Applicant did not stop making suggestions and raising issues, her contract was not going to be extended.⁴⁵

78. Recalling that the impugned investigation was directed at MD and CM, the Tribunal cannot review complaints against SAW.

79. That the Panel omitted to question any witness, including SAW, about this issue neither contravened any aspects of sec. 5.16 of ST/SGB/2008/5 nor represented a failure to investigate the complaint.

The complaint that performance evaluation was conducted in bad faith in retaliation for a management evaluation request that the Applicant filed in connection with a recruitment

80. The Applicant advances several arguments to back this claim. Firstly, that she is the only staff member in DESIB to have made a complaint about a corrupt recruitment process, yet she was the only one in DESIB for whom the performance review process for 2015-2016 had not begun, which she does not consider a mere coincidence.⁴⁶

⁴⁴ Ibid., p. 518 (para. 105).

⁴⁵ Ibid., p. 519 (para. 111).

⁴⁶ Ibid., p. 424 (para. 25) and p. 653 (paras. 12-13).

81. The Tribunal notes that MD (the Applicant's FRO), CM (the Applicant's SRO), JS (who supervised the Applicant for three months), and NF were never questioned about this assertion.⁴⁷

82. The failure to question key witnesses about the complaint supports a finding, as the Tribunal does, that the claim was not properly investigated. The Panel therefore contravened sec. 5.16 of ST/SGB/2008/5, thereby violating the Applicant's due process rights.

83. Secondly, the Applicant alleges that a change of her workplan was made to *ex post facto* justify her exclusion from meetings and other harassment and abuse of authority. She explains that the workplan was sent approximately a week later after it was created.⁴⁸

84. MD was questioned about this issue.⁴⁹ He explained that the Applicant was engaged to work primarily on indicators, but that in early May 2016 she mentioned that she wanted to do more regarding accountability, and additional tasks were added. SAW corroborates MD's evidence in this regard.⁵⁰

85. Both MD and SAW did not, however, respond to the question about the delay in creating a workplan. This formed the basis for the Panel's finding that performance management provisions (ST/AI/2015/5) may not have been adhered to in so far as the Applicant did not have a formal work plan during the first month of her assignment, and that there was a delay in formalising the work plan. Issues of bad faith, abuse of authority and harassment were however not addressed by the Panel.

86. Based on the foregoing, the Tribunal concludes that the Panel's finding does not represent an effective response to the complaint as laid. This complaint was not properly investigated, and that the Applicant's due process rights were violated.

⁴⁷ Ibid., pp. 669-674, pp. 675-679, pp. 694-697 and pp. 680-684.

⁴⁸ Ibid., p. 654 (para. 22) and p. 660 (para. 33).

⁴⁹ Ibid., p. 670-671 (paras. 3-4).

⁵⁰ Ibid., p. 509 (para. 53).

87. Thirdly, the Applicant asserts that reliance was made on unfounded malicious rumours, such as that she had shouted, and on gender-based remarks,⁵¹ and yet she was not given an opportunity to defend herself against them. She cites SM's statements to support her complaint.⁵²

88. Issues of the alleged spreading of malicious rumours, gossip, or innuendo, and gender-based remarks have been reviewed (see paras. 57 to 63 above). Findings that the Panel properly investigated them, and that there was a rational connection between the information before the responsible official and the Panel's conclusion were arrived at. That the Applicant is introducing these issues in connection to performance evaluation is being repetitive. These issues will not be reviewed any further.

Intimidation by NF that the Applicant should stop complaining or he would issue a bad performance evaluation

89. The Applicant stated that during the performance end-of-cycle discussion with NF, he said that if she did not stop complaining he would give her a bad performance evaluation.⁵³

90. Since this complaint is against NF who was not the subject of the impugned investigation, the Panel's omission to question the witnesses including NF about it neither contravened sec. 5.16 of ST/SGB/2008/5 nor represented a failure to investigate a complaint.

91. The Applicant maintains that the conclusions of the Panel only exclusively address the procedure by which her performance evaluation was determined,⁵⁴ leaving out evidence that former supervisors were being convened to discuss her in negative terms.

⁵¹ Ibid., p. 659 (para. 5).

⁵² Ibid., see pp. 705-706 (paras. 11, 12, 21 and 24).

⁵³ Ibid., p. 520 (para. 115).

⁵⁴ Ibid., p. 648 (bullet points).

92. She also maintains that two of her former supervisors, who had positively reviewed her teamwork in previous reporting cycles, were called to a meeting with NV, KW and ET where the topic was how problematic she was. While this assertion was corroborated by JS,⁵⁵ the fact that none of the people who met to discuss the Applicant was a subject of the impugned investigation, removes that meeting and its discussions from the parameters of the current judicial review.

93. The Applicant cited MD's evidence about a former manager from the Human Rights Council Branch refusing to recommend her in a recruitment process without divulging the reason,⁵⁶ and maintains that this was relevant evidence concerning the use of performance evaluation to punish her.

94. Since that former manager was not the subject of the impugned investigation, the fact that he did not divulge the information in issue cannot be part of the current judicial review. Moreover, MD's evidence that the Applicant was nonetheless recommended but that a candidate with superior development experience was appointed negates the suggestion that she was not selected on account of bad faith in conducting the performance evaluation.

95. The Tribunal finds that the complaints that the Applicant is the only staff member in DESIB to have made a complaint about a corrupt recruitment process, yet she was the only one in DESIB not to have had the 2015-2016 performance evaluation process underway, and that the creation of her workplan was delayed due to bad faith were not properly investigated. The Applicant's due process rights were thus violated in this respect.

Trying to set the Applicant up to fail by refusing to share relevant information. Refusal to take a decision on Bangkok

96. The Applicant does not specify what relevant information was not shared with her, thereby rendering this complaint unsubstantiated. The lack of substantiation rendered the complaint impossible of meaningful investigation.

⁵⁵ Ibid., p. 510 (para. 63).

⁵⁶ Ibid., p. 627 (para. 26).

97. Moreover, there seems to be a contradiction between the complaint as laid, i.e., that there was a “refusal to take [a] decision on Bangkok”, and the Applicant’s evidence that her absence on sick leave was used as an excuse to further exclude her when there was an opportunity to go to Bangkok, and that NF responded that she “could get sick” if she went and he attempted to remove that professional opportunity.⁵⁷

98. Based on the above, the Tribunal finds that the allegation that the Panel failed to properly investigate her complaint is without basis.

Joking about the Applicant’s national origin, comments about people from Belfast and the Irish joke which the Applicant interrupted

99. The Applicant stated that CM made an Irish joke about a car bomb in the context of a professional meeting with MD, SAW and GB.⁵⁸ She alleges that CM was aware that she had grown up in Northern Ireland and that her family was impacted by the troubles there, which made the joke entirely inappropriate on the face of it, individually significantly more offensive and humiliating.

100. Other than the Applicant, none of the witnesses who were interviewed, including CM⁵⁹ who was the subject of the complaint, was questioned about it, representing a failure to investigate the complaint in contravention of ST/SGB/2008/5, and a violation of the Applicant’s due process rights.

Constant criticism without a single example of wrongdoing

101. This complaint was not substantiated in terms of availing particulars of the criticism the Applicant was subjected to. This rendered the complaint too vague to be meaningfully investigated.

102. The Tribunal therefore finds that the complaint of the alleged failure to investigate this claim is without basis.

⁵⁷ Ibid., p. 519 (para. 106) and p. 659 (para. 9).

⁵⁸ Ibid., p. 519 (para. 107).

⁵⁹ Ibid., pp. 628-630.

Unwarranted comments on performance evaluation and no action to ensure accuracy

103. The Applicant maintains that her 2015-2016 performance evaluation was based on lies. She alleges that had comments about respect, communication and teamwork made therein been true, they would not have supported a rating of “meets expectations”.⁶⁰ She also maintains that SAW was reporting gossip to MD who in turn reported it to CM. The gossip was used in the performance evaluation without an opportunity for the Applicant to defend herself.⁶¹

104. The Tribunal determines that this issue was properly investigated, and that the Panel’s conclusion was backed by evidence.

105. In his interview statement, CM states that the Applicant’s substantive contributions were very good, she produced a lot of good work, but her demeanour and interactions were harsh, shattered, and emotional. He found out that her colleagues were intimidated by her. He added that these issues were raised in the last performance cycle discussions, and it was made clear to the Applicant that something needed to be corrected.

106. CM believed that the Applicant had health issues, and when dealing with issues related to health, he thought that putting things in writing might protect the management and the office but might prejudice the Applicant.

107. He further stated that managers were doing a balancing analysis: on the one hand, they had someone very strong on the substantive side and, on the other hand, she had problems working with teams.

108. He explained that the issues (i.e., concerning the Applicant’s respect, communication, and teamwork) were therefore not reflected in the performance documents before exhausting all other instances so as not to penalise her.⁶²

⁶⁰ Ibid., p. 643 (para. 101).

⁶¹ Ibid., p. 659 (para. 13).

⁶² Ibid., pp. 504-505 (paras. 31-37).

109. The above statements negate the complaint about unwarranted comments on the Applicant's performance evaluation, and the assertion that no action was taken to ensure accuracy. It is also clear that the complaint was investigated. CM gave a reasonable explanation for the apparent contradiction in the Applicant's performance evaluation documents, thereby supporting a finding as the Tribunal does, that there was a rational connection between the information before the responsible official and the contested decision that there was no prohibited conduct requiring further action.

Blocking applications for posts in DESIB

110. The Applicant states that she was blacklisted for posts in CM's Branch. She applied for many of them, but was no longer invited for interviews, even for posts for which she was previously interviewed.

111. Other than the Applicant, none of the witnesses who were interviewed, including CM⁶³ who was the subject of this complaint, was questioned about it, which represents a failure to investigate the complaint. This supports a finding, as the Tribunal does, that sec. 5.16 of ST/SGB/2008/5 was not complied with, and that there was a violation of the Applicant's due process rights.

NF's interruption of a substantive conversation with an expert to tell her to clean the room after a meeting.

112. Being that this complaint is against NF, who was not a subject of the impugned investigation, the omission of the Panel to question any witness including NF about it does not represent a failure to investigate it.

Summary of the Tribunal's findings concerning the fact-finding investigation on the issues remanded to it

113. The Applicant's claims were properly investigated in terms of ST/SGB/2008/5 in relation to the following allegations:

⁶³ Ibid., pp. 628-630.

- a. The complaint that she was excluded from team meetings (paras. 45 to 51 above);
- b. The exclusion from a meeting with SAW (paras. 52 to 55 above);
- c. The alleged spreading of untrue malicious rumours, gossip, or innuendo (that SAW and GB shared with MD who allegedly based performance evaluations on) and yelling (SAW) (paras. 57 to 63 above);
- d. Gender-based remarks (paras. 64 to 68 above);
- e. Statements that the Applicant is aggressive and difficult, and comments about her “tone” (paras. 71 to 76 above);
- f. Belittling the Applicant’s position on reference to “the family” as being oversensitive due to her sexual orientation (para. 77 to 79 above);
- g. Threat of a bad performance evaluation by NF (paras. 89 to 90 above);
- h. Former supervisors convened meetings to discuss about her (paras 91 to 92 above);
- i. A former manager from the Human Rights Council Branch refusing to recommend her in a recruitment process without divulging the reason (paras 93 to 94 above);
- j. Not sharing relevant information (paras. 96 to 98 above);
- k. Constant criticism without a single example of wrongdoing (paras. 101 to 102 above);
- l. Unwarranted comments on performance evaluation and no action to ensure accuracy (paras. 103 to 109 above); and
- m. NF’s interruption of a substantive conversation with an expert to tell her to clean the room after a meeting (para. 112 above),

114. Consequently, the Applicant’s claims over the above allegations fail.

115. The Tribunal finds that the Panel did not properly investigate the allegations below:

- a. The alleged withdrawal of funding for a position as soon as the Applicant's name was associated with it (para. 31 above);
- b. The Applicant's exclusion from three meetings of the three-person team she worked with on topics included in her terms of reference (para. 44 above);
- c. The allegation of *ad hominem* attacks against the Applicant in the form of:
 - i. Trivialisation of a legitimate complaint of exclusion as a "communication issue" or "personal conflict", refusal to receive evidence, accusation being oversensitive, and imagining things (paras. 69 to 70 above);
- d. The allegation that performance evaluation was conducted in bad faith, since the Panel did not properly investigate claims that:
 - i. The Applicant was the only staff member in DESIB who made a complaint about a corrupt recruitment process, yet she was the only one not to have had the 2015-2016 ePAS process underway (paras. 80 to 82 above); and
 - ii. The change of workplan was made to *ex post facto* justify the Applicant's exclusion from meetings and other harassment and abuse of authority, (paras. 83 to 85 above);
- e. Joking about the Applicant's national origin, comments about people from Belfast and the Irish joke which the Applicant interrupted (paras. 99 to 100 above); and
- f. Blocking applications for posts in DESIB (paras. 110 to 111 above).

116. In keeping with art. 2.1(a) of its Statute, the Tribunal must determine the legality, reasonableness, and procedural fairness of the administrative decision to close the case with managerial actions aimed at reminding the implicated managers to ensure the proper and timely application of the performance management framework envisioned in ST/AI/2010/5.

117. Under ST/SGB/2008/5, the Panel had to interview the aggrieved individual, the alleged offender and any other individuals who may have relevant information about the conduct alleged (sec. 5.16), and compile and submit a detailed report to the responsible official (sec. 5.17) who, in turn, is mandated to decide on a course of action on the basis of the report (sec. 5.18).

118. The impugned decision was premised on the reasoning that except for the allegation that there was delay in conducting performance evaluation, the other allegations were not corroborated by the examples the Applicant provided or by the witness statements.

119. The Tribunal has however listed in para. 115 above the complaints that were not properly investigated. It has also found that only the procedural aspects of performance evaluation were investigated, leaving out aspects of bad faith, abuse of authority, and harassment (para. 85 above).

120. It follows that the responsible official acted on a partially defective report. Consequently, the decision to close the case with managerial action cannot stand with respect to the complaints that were not properly investigated.

Remedies

121. The Appeals Tribunal required this Tribunal to draw “its own reasoned conclusions ... [on] whether there had been irregularities such as the failure of the Administration to address the specific harassment complaints, and whether the specific incidents indicated in [the Applicant’s] complaint could be reasonably characterized as breaches of the Organization’s policies and regulations, meriting a finding of abuse of power and harassment” (para. 14 above).

122. The UNDT finding has not been that there was evidence to support all the Applicant's complaints, but rather that the fact-finding panel did not conduct a proper investigation of some of the elements of the Applicant's allegations remanded by the Appeals Tribunal.

123. That being the position, a finding, for example, that there were breaches of the Organization's policies and regulations meriting a finding of abuse of power and harassment, would be tantamount to a final determination of misconduct without affording the relevant subjects an opportunity to be heard. Such a pronouncement would be without basis since information relevant to it might not be on record.

124. In view of the time lapse since the events in support of the Applicant's allegations that were not properly investigated occurred, the Tribunal does not find it suitable to remand these allegations for a *de novo* fact-finding investigation. The identified shortcomings however justify an order of compensation for moral damages.

125. As this Tribunal observed in *Reilly* UNDT/2021/093 (paras. 173-174), the Applicant has provided evidence in support of her request for compensation for moral damages.

126. The Tribunal does not agree with the Applicant that this case reflects the situation of *Belkhabbaz* 2018-UNAT-873 where an award of USD10,000 was made. Unlike this case, in *Belkhabbaz* a finding of misconduct was arrived at.

127. In view of the Appeals Tribunal's findings on the matter, the UNDT previous award, and its decision in this case not to remand the Applicant's claims for a *de novo* fact-finding investigation, the Tribunal finds that an additional award of USD5,000 for moral damages is adequate.

Conclusion

128. The Tribunal DECIDES as follows:

- a. The decision to close with managerial action the Applicant's 20 July 2016 complaint of harassment and abuse of authority in connection with the allegations listed in para. 115 above is rescinded;
- b. In view of the time lapse since the events in support of the above-mentioned allegations occurred, the matter will not be remanded for a *de novo* fact-finding investigation;
- c. Pursuant to paras. 124 to 127 above, the Tribunal grants the Applicant compensation for moral damages in the amount of USD5,000 which shall bear interest at the United States of America prime rate with effect from the date this Judgment becomes executable until payment of said compensation. An additional five per cent shall be applied to the United States of America prime rate 60 days from the date this Judgment becomes executable; and
- d. All other claims are rejected.

(Signed)

Judge Margaret Tibulya

Dated this 7th day of November 2023

Entered in the Register on this 7th day of November 2023

(Signed)

René M. Vargas M., Registrar, Geneva