



**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

---

Judgment No. 2022-UNAT-1232

**Baker Kosmac Okwir  
(Appellant)**

**v.**

**Secretary-General of the United Nations  
(Respondent)**

**JUDGMENT**

---

Before: Judge Sabine Knierim, Presiding  
Judge Dimitrios Raikos  
Judge Martha Halfeld

Case No.: 2021-1547

Date: 18 March 2022

Registrar: Weicheng Lin

---

Counsel for Appellant: Self-represented

Counsel for Respondent: André Luiz Pereira de Oliveira

**JUDGE SABINE KNIERIM, PRESIDING.**

1. Before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), Mr. Baker Kosmac Okwir, an Auditor at the P-3 level, Internal Audit Division, Office of Internal Oversight Services (IAD/OIOS and OIOS, respectively) in Geneva, contested the Administration's decision not to initiate a fact-finding investigation into his complaint against the Chief, Headquarters Audit Section (HAS), IAD/OIOS (Chief), and the Director, IAD/OIOS (Director). By Judgment No. 2021/026, the UNDT dismissed the application.

2. Mr. Okwir has filed an appeal. For the reasons set out below, we uphold the UNDT Judgment.

**Facts and Procedure**

3. Following previous assignments in other duty stations, Mr. Okwir began service as an Auditor at the P-3 level with the United Nations High Commissioner for Refugees (UNHCR) IAD/OIOS in Geneva on 1 August 2019.

4. On 30 August 2019, Mr. Okwir began an exchange of e-mails with the Chief, HAS, IAD/OIOS, concerning Mr. Okwir's obligation to comply with the rules related to time attendance and to timely register his absences from the office. The Chief was also acting as Officer-in-Charge (OiC) of the UNHCR Audit Service.

5. On 2 September 2019, Mr. Okwir submitted to the Director of IAD/OIOS a complaint about "harassment, work bullying, failure to provide a conducive working environment and abuse of office" against the Chief (first complaint). Mr. Okwir raised several allegations related to how the Chief monitored his attendance and absences from the office. He also asked the Director of IAD/OIOS to withdraw the delegation of authority as OiC from the Chief and investigate his actions. One day later, i.e., on 3 September 2019, the Director discussed by telephone with Mr. Okwir the matters he had raised in his complaint.

6. On 3 October 2019, the Director responded in writing to Mr. Okwir's first complaint and provided him with suggestions on handling some of the interpersonal issues he had raised. Among other things, the Director informed Mr. Okwir that it was the responsibility of the Time and Attendance Monitor to monitor the attendance of all staff members and to ensure that their absences were correctly recorded, and she made clear that no special monitoring

arrangements had been established explicitly for him. The Director further stated that there was nothing unusual in the fact that the Chief, as OiC of the UNCHR Audit Service, would engage with him on work-related matters; and that the Chief's questions about his settling-in to Geneva were typical questions a manager might ask a staff member settling into the duty station. She concluded that there were no grounds to grant the "remedies" Mr. Okwir had sought.

7. Also on 3 October 2019, Mr. Okwir submitted a complaint of prohibited conduct to the Assistant Secretary-General for Internal Oversight Services (ASG/OIOS) and then OiC of OIOS (OiC/OIOS) (second complaint). In addition to the matters that Mr. Okwir had already raised in the 2 September 2019 complaint, he alleged that he had been subject to retaliation, since he had received negative feedback on his work product.

8. On 5 October 2019, Mr. Okwir wrote another e-mail to the ASG/OIOS. In this e-mail, he stated that he believed that the Director of IAD/OIOS had spoken to the Chief, HAS, IAD/OIOS, about the matter and that the Director's assessment and conclusion were biased. He expressed his disagreement with the Director's assessment and stated that the Director's e-mail of 3 October 2019 caused him distress.

9. On 14 October 2019, Mr. Okwir submitted a request for protection against retaliation under Secretary-General's Bulletin ST/SGB/2017/2/Rev.1 (Protection against retaliation for reporting misconduct and cooperating with duly authorized investigations) to the Ethics Office. The Ethics Office responded to Mr. Okwir on 22 October 2019, informing him that it had decided to close the case with no further action since Mr. Okwir had failed to present any meaningful evidence showing a *prima facie* case of retaliation from the Chief against him.

10. On 23 October 2019, Mr. Okwir provided the ASG/OIOS with additional information regarding his complaint. In particular, he informed the ASG/OIOS that he had filed a request for protection against retaliation and received a response from the Ethics Office. He further informed the ASG/OIOS that he had had a meeting with the Director of IAD/OIOS on 22 October 2019 and that the Director had told him to "move on" and asked his first reporting officer to "build capacity for [him]", which he considered to be retaliatory comments. He also wrote that he believed that the designation of the Chief, HAS, IAD/OIOS, as OiC was unlawful.

11. On 25 October 2019, the ASG/OIOS informed Mr. Okwir that after a careful review of his complaint, he had found that there were not sufficient grounds for initiating a fact-finding investigation in accordance with either Secretary-General's Bulletin ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority) or Administrative Instruction ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process). A few hours later, Mr. Okwir sought clarification whether his 5 and 23 October 2019 e-mails (including his complaint of misconduct against the Director) had been received and evaluated. By e-mail of the same day, 25 October 2019, the ASG/OIOS answered that his decision was in reference to the complaint submitted on 3 October 2019, and that he had "also today emailed to you responses to the additional e-mails that you have sent to me on 5 and 23 October 2019".

12. On 31 October 2019, Mr. Okwir submitted a request for management evaluation of the OIOS decision not to investigate Mr. Okwir's allegations. He complained that the ASG/OIOS "rushed" through his assessment without taking into account the additional submissions. He also stated that a formal fact-finding investigation was warranted against the Chief, HAS, IAD/OIOS and the Director. On 13 December 2019, the Under-Secretary-General for Management Strategy, Policy and Compliance upheld the contested decision.

13. On 13 January 2020, Mr. Okwir filed his application before the UNDT disputing the OIOS decision not to investigate Mr. Okwir's allegations presented in the second complaint.

14. On 22 March 2021, the UNDT issued Judgment No. 2021/026 rejecting the application. The UNDT held that the OiC/OIOS had the authority to take the decision not to investigate Mr. Okwir's allegations presented in the second complaint. The UNDT further held that the responsible official, the OiC/OIOS, had lawfully considered that the facts reported by Mr. Okwir in the second complaint did not amount to misconduct, even if true. Finally, the UNDT held that the decision was reasonably taken. Even though there were tensions between Mr. Okwir and the Chief regarding the monitoring of his attendance and work performance, these facts related to work performance and other work-related issues and did not amount to prohibited conduct.

15. On 16 April 2021, Mr. Okwir filed his appeal and on 21 June 2021, the Secretary-General filed his answer.

## Submissions

### Mr. Okwir's Appeal

16. Relying on Staff Rule 1.2(h)<sup>1</sup> and Section 2.1 of Secretary-General's Bulletin ST/SGB/2019/2 (Delegation of authority in the administration of the Staff Regulations and Rules and the Financial Regulations and Rules), Mr. Okwir contends that the OiC/OIOS had no authority to take the contested decision, since all the sub-delegations issued to the ASG/OIOS allowing him to act as OiC/OIOS ceased on the appointment of the new USG/OIOS, which occurred on 25 October 2019, i.e., on the same date that the OiC/OIOS took the contested decision. Relying on Article 9(1) of the UNDT Statute and Article 18(2) of its Rules of Procedure, Mr. Okwir further contends that the UNDT should have ordered the production of documents or such other evidence from the Administration or Mr. Okwir to ascertain the validity of sub-delegation of authority to the ASG/OIOS.

17. The UNDT erred in finding that the OiC/OIOS conducted a preliminary assessment following Sections 5.5 to 5.7 of ST/AI/2017/1. The authority to conduct a preliminary assessment is the dual responsibility of both the responsible official and OIOS. Before taking the contested decision, it was mandatory for the OiC/OIOS as the responsible officer to request the ID/OIOS to conduct a preliminary assessment of the second complaint. Moreover, relying on the UNAT case law, Mr. Okwir asserts that the UNDT was not allowed to consider "the comments of the administration's response for management evaluation as evidence to hold that a preliminary assessment was conducted".

18. The UNDT exceeded its jurisdiction when it found that the OiC/OIOS concluded that there were insufficient grounds to investigate and closed the matter without further action. In so ruling, the UNDT disregarded that Section 2.1(h) of ST/AI/2017/1 provides that the responsible official is to determine whether there are "sufficient grounds" to initiate an investigation, requiring, therefore, more than one ground to consider. Furthermore, the UNDT also disregarded Section 3.1 of ST/AI/2017/1, which establishes that "the category of 'unsatisfactory conduct' includes actions of 'sufficient gravity' that amounts to the level of

---

<sup>1</sup> Staff Rule 1.2(h) provides that "[s]taff members shall not intentionally misrepresent their functions, official title or the nature of their duties to Member States or to any entities or persons external to the United Nations".

misconduct”. Finally, UNAT should examine the oral evidence provided by two witnesses showing the gravity of the alleged unsatisfactory conduct.

19. The UNDT incorrectly relied on a UNAT judgment which was issued before ST/AI/2017/1 and ST/SGB/2019/8 had come into force.

20. The UNDT erred in finding that the OiC/OIOS reasonably concluded that the facts Mr. Okwir had presented in the second complaint did not amount to prohibited conduct, even if true, as they related to work performance or other work-related issues. The provision of Section 1.1 of ST/SGB/2019/8 relating to disagreement on work performance or other work-related issues does not absolutely exclude work-related issues from the scope of ST/SGB/2019/8. In this regard, the UNDT also erred by only considering harassment and abuse of authority. The UNDT erroneously disregarded that the matters he had raised in the second complaint were not restricted to time recording issues and constituted harassment and abuse of authority, discrimination, and misuse of office.

21. The UNDT has failed to find that the OiC/OIOS disregarded all the additional information he presented on 5 and 23 October 2019.

22. The Director’s conduct to involve the Chief to draft the e-mail from the Director on her instruction which was later sent to Mr. Okwir are not actions expected of a Director of the United Nations. Her message constitutes harassment, discrimination, and abuse of authority, since it employed words that would have annoyed, demeaned, intimidated, belittled, humiliated, and embarrassed him. The Chief and the Director’s actions included the use of intimidation, threats, blackmail, or coercion which created a hostile or offensive work environment.

23. Mr. Okwir asks that the contested impugned decision be rescinded; that the UNDT Judgment be vacated in its entirety; that UNAT find that the OiC/OIOS failed to conduct the preliminary assessment to initiate an investigation in Mr. Okwir’s complaint in accordance with the procedures set out in ST/SGB/2019/8 and ST/AI/2017/1; find that the Chief and Director engaged in misconduct not limited to discrimination, harassment, abuse of authority, misuse of office including breach of confidentiality, and misrepresentation; and refer the Chief and Director for possible action to enforce accountability.

**The Secretary-General's Answer**

24. The UNDT correctly held that the contested decision was taken lawfully by the ASG/OIOS in his official capacity as OiC/OIOS. In light of Section 4.3 of ST/SGB/2019/2, the UNDT correctly noted that the ASG/OIOS was appointed as OiC by the previous USG/OIOS pending the appointment of a new head of OIOS. The fact that the new USG/OIOS began her term at the same date that the ASG/OIOS took the contested decision did not imply that the sub-delegations to him allowing him to act as OiC/OIOS were withdrawn or modified, and there was no evidence to that effect.

25. Contrary to Mr. Okwir's claims, Section 2.1 of ST/SGB/2019/2 does not apply as this case does not concern the sub-delegation of authority from the Secretary-General but rather, concerns the delegation of authority from the USG/OIOS to the ASG/OIOS allowing him to act as OiC and, in this capacity, to take disciplinary decisions concerning OIOS's staff members. Staff Rule 1.2(h) also does not support Mr. Okwir's contentions, since in this case, the ASG/OIOS was legally allowed to take the contested decision given that the sub-delegation allowing him to act as OiC/OIOS had not expired or been withdrawn. Accordingly, he had not misrepresented his functions, since he had indeed been the OiC of OIOS as he identified himself in the contested decision. Since it was unquestionable that the ASG/OIOS was legitimately acting in his capacity of OiC and the exercising of this authority was perfectly valid, there was no need for the UNDT to order the production of documents or any other evidence.

26. The UNDT correctly held that the contested decision complied with the applicable procedural requirements outlined in ST/AI/2017/1 and ST/SGB/2019/8. Nothing in ST/AI/2017/1 or ST/SGB/2019/8 allows for Mr. Okwir's assumption that the OiC/OIOS, as the responsible officer in the instant case, should have requested the ID/OIOS to conduct a preliminary assessment on the second complaint before taking the contested decision. Instead, Section 2.1(h) of ST/AI/2017/1 sets forth that a "preliminary assessment" consists of "the review and analysis by a responsible official or OIOS of information about unsatisfactory conduct in order to determine whether there are sufficient grounds to initiate an investigation". Therefore, the OiC/OIOS had the authority to conduct the preliminary assessment of the second complaint since he was the responsible official under Section 2.1(h) of ST/AI/2017/1, and he did so following the legal framework.

27. Contrary to Mr. Okwir's assertion that the UNDT was not allowed to consider the comments of the Administration's response for management evaluation as evidence to hold that a preliminary assessment was conducted, the comments that OIOS provided at the stage of management evaluation were part of the case records and as such, the UNDT was allowed to rely on them. The UNDT relied on the management evaluation decision in the instant case as one of the pieces of evidence attached to the case records, not as the contested decision.

28. Accordingly, the applicable legal framework has not established that only the ID/OIOS had the authority to conduct the preliminary assessment of the second complaint. In this case, under ST/AI/2017/1 and ST/SGB/2019/8, the ASG/OIOS, in his role of OiC/OIOS, had the authority to conduct the preliminary assessment and to exercise his discretion in assessing whether sufficient grounds were allowing the start of the fact-finding process. Therefore, the OiC/OIOS had the authority not only to conduct the preliminary assessment of the complaints but also to determine whether there were or were not sufficient grounds allowing the start of the fact-finding process.

29. Mr. Okwir has failed to demonstrate that the UNDT exceeded its jurisdiction in finding that the reported conduct was not a matter that could amount to prohibited conduct. At the outset, it was not for Mr. Okwir but for the responsible official, i.e., the OiC/OIOS in this case, to determine if there were sufficient grounds to initiate the fact-finding process. In the instant case, the Administration complied with the provisions of ST/AI/2017/1 and ST/SGB/2019/8 when it assessed the second complaint and determined that there were insufficient grounds to commence a formal fact-finding investigation. Since the facts that Mr. Okwir described only show the existence of disagreement between Mr. Okwir and the Chief relating to his attendance in the office and the review of some of the audit reports elaborated by Mr. Okwir, the OiC/OIOS was reasonable when he concluded that there were insufficient grounds to start an investigation process into allegations of prohibited conduct under ST/SGB/2019/8.

30. As to Mr. Okwir's contention that the UNDT incorrectly relied on a UNAT judgment issued before ST/AI/2017/1 and ST/SGB/2019/8 had come into force, similar considerations apply under the framework set out in ST/SGB/2019/8 and ST/AI/2017/1, since the same rationale is still in force under the current legal framework. As in ST/SGB/2008/5, neither ST/AI/2017/1 nor ST/SGB/2019/8 grants Mr. Okwir any right to compel the Administration to start a fact-finding process into the allegations of prohibited conduct presented in the complaints. It was for the OiC/OIOS to regularly exercise the discretion of determining whether there were



sufficient grounds warranting the start of the investigation procedure after conducting a preliminary assessment of the allegations set out in the complaints.

31. The UNDT correctly found that the contested decision was lawful. First, the Judgment stated that the OiC/OIOS reasonably concluded that the allegations did not amount to prohibited conduct even if true. Therefore, the UNDT agreed with the assessment of the OiC/OIOS, who considered no misconduct of any nature had occurred. In so concluding, the UNDT's analysis was not restricted to harassment and abuse of authority. Second, contrary to Mr. Okwir's claims, the facts that he presented in his complaint only amounted to work-related issues, not misconduct. Finally, contrary to Mr. Okwir's claims, the OiC/OIOS did consider the additional information that he had presented on 5 October and 23 October 2019. On 25 October 2019, the OiC/OIOS responded to Mr. Okwir, advising him to discuss with the Director his issues regarding the appointment of another OiC for the UNHCR Field Audit Section instead of the Chief. Therefore, in doing so, the OiC/OIOS addressed the Appellant's contentions in the context of performance management in compliance with ST/SGB/2019/8.

32. Mr. Okwir has not demonstrated that the Director's actions towards him amounted to prohibited conduct. Mr. Okwir is merely speculating that the Director had asked the Chief to draft the 3 October 2019 Director's decision without presenting any meaningful evidence corroborating his assumption. A clear reading of the 3 October 2019 Director's decision shows that the Director provided Mr. Okwir, in a very polite and professional manner, with the reasons that she took into consideration in concluding that the facts he had alleged in the first complaint did not amount to prohibited conduct.

33. Mr. Okwir's assertions that the Director's denial to release the Chief from the authority of OIC, UNHCR Audit Service is also outside the scope of this case, since it is not a reviewable decision and he failed to request requested management evaluation. Notwithstanding this, the OiC/OIOS informed Mr. Okwir that, in his views, such appointment was appropriate and consistent with the OIOS guidelines.

34. The Secretary-General requests that UNAT uphold the UNDT Judgment and dismiss the appeal in its entirety.

## Considerations

### *Oral hearing*

35. The Appellant requests an oral hearing to get “[t]estimony evidence of two competent witnesses”. Oral hearings are governed by Article 18 of the UNAT Rules of Procedure which provides, in relevant part: “The judges hearing a case may hold oral hearings on the written application of a party or on their own initiative if such hearings would assist in the expeditious and fair disposal of the case.”

36. In the present case we find that an oral hearing would not assist in the expeditious and fair disposal of the case. According to Article 2(5) of the UNAT Statute, the Appeals Tribunal can only receive documentary evidence but may not hear witnesses.

### *Merits of the appeal*

*Whether the ASG/OIOS had the authority to issue the contested decision on 25 October 2019, the date when the new USG/OIOS assumed her office*

37. The UNDT relied on Sections 2.1 and 4.3 of ST/SGB/2019/2 which read as follows:

2.1 As the chief administrative officer of the Organization under the Charter of the United Nations, the Secretary-General holds the primary authority and accountability for the administration of the Staff Regulations and Rules and the Financial Regulations and Rules. The Secretary-General’s authority may be delegated in accordance with the principles and procedures set out in the present bulletin.

...

4.3 The authorities delegated to heads of entity are specific to that function and are not personal in nature. When heads of entity cease to hold the appointment for that function, they will no longer hold or be able to exercise the authorities delegated to that function. Pending the appointment of an officer-in-charge, an officer ad interim or a replacement head of entity, all subdelegations will remain in effect. When the head of entity is succeeded by another, the duly appointed successor will ordinarily be afforded the same level of delegations as the predecessor and shall be notified of and accept the delegations through the online portal. All subdelegations issued by the predecessor shall remain valid, with the accountability transferring to the successor unless otherwise withdrawn or modified by the successor.

38. The UNDT found that the ASG/OIOS was appointed as OiC/OIOS by the previous USG/OIOS pending the appointment of a new head of entity. As Section 4.3 provides that all subdelegations issued by the predecessor shall remain valid unless otherwise withdrawn or modified by the successor, the UNDT concluded that the mere fact that the new USG/OIOS began her term does not make subdelegations by the predecessor invalid. The UNDT further stated there was no allegation or evidence that subdelegations to the ASG/OIOS as OiC/OIOS had been withdrawn or modified by the new USG/OIOS; rather, in the contested decision, the ASG/OIOS used his title as OiC/OIOS.

39. We find no error in the UNDT Judgment. Its reasoning and interpretation of Section 4.3 of ST/SGB/2019/2 are correct.

40. The Appellant submits that the use of the word “intentional” in Staff Rule 1.2(h) makes clear that this prohibition does not extend to accidental or inadvertent actions of misrepresentation of titles. From this he concludes that all delegations issued to the ASG/OIOS ceased on the appointment of the head of office, the USG/OIOS. He further states that Section 4.3 distinguishes between subdelegations pending the appointment and subdelegations issued by the head-of-office’s predecessor. Finally, he claims that the UNDT failed to exercise its discretionary jurisdiction under Article 9(1) of the UNDT Statute and Article 18(2) of the UNDT Rules of Procedure to order for production of documents or other evidence to ascertain the validity of sub-delegation of authority to the ASG/OIOS.

41. There is no merit in these arguments.

42. The UNDT had no reason to doubt that the ASG/OIOS had been appointed as OiC by the previous USG/OIOS nor to assume that the subdelegation to the ASG/OIOS had already been withdrawn by the new USG/OIOS on the day of her appointment, 25 October 2019. Therefore, it was not necessary for the UNDT to request any evidence from the Administration with respect to this issue.

43. Staff Rule 1.2(h) prohibits the intentional misrepresentation of official titles or duties making clear that such misrepresentation constitutes misconduct. However, it does not follow from Staff Rule 1.2(h) in which cases an official title or function is misrepresented nor does the provision deal with the question who has authority to exercise official functions pending and after

the appointment of an OiC, an officer ad interim or a replacement head of entity. This is clearly governed by Section 4.3 of ST/SGB/2019/2.

44. Section 4.3 of ST/SGB/2019/2 does not distinguish between subdelegations pending the appointment and subdelegations issued by the head-of-office's predecessor. Rather, the provision rules on the issue of subdelegations pending and after an appointment of an officer-in-charge, an officer ad interim or a replacement head of entity. It provides, firstly, that pending such appointments, all sub-delegations will remain in effect, and secondly, that after such appointments, the appointed successor will ordinarily be afforded the same level of delegations as the predecessor, but, at the same time, all subdelegations issued by the predecessor shall remain valid unless otherwise withdrawn or modified by the successor.

45. It follows from this provision that on 25 October 2019, both the ASG/OIOS and the newly appointed USG/OIOS were competent to make the decision. The new USG/OIOS had delegated power, and the ASG/OIOS still had subdelegated power because there is no allegation or evidence that the new USG/OIOS had already withdrawn the sub-delegation.

*Whether the contested decision is procedurally correct*

46. The UNDT held that the OiC/OIOS undertook a preliminary assessment pursuant to Section 5.5 of ST/SGB/2019/8 and Sections 5.5 to 5.7 of ST/AI/2017/1 and, therefore, the contested decision complied with the procedural requirements. In the contested decision, the OiC/OIOS indicated that he decided not to initiate a fact-finding investigation as he did not find sufficient grounds for it. In the comments provided during the management evaluation process, OIOS further explained that the OiC/OIOS considered the responses by the Director of IAD/OIOS to the Appellant appropriate and that none of the incidents cited by the Appellant demonstrated prohibited conduct by the Chief, HAS, IAD/OIOS. The UNDT noted that while the decision by the OiC/OIOS does not refer to the specific sub-sections in Section 5.5 of ST/AI/2017/1, "it is clear that he considered that the reported conducts were not 'a matter that could amount to misconduct' (subsec. (a)) even if true".<sup>2</sup> Contrary to the Appellant's argument, Section 5.5 does not require the responsible official to consider all the factors set forth in that section but states that these factors may be considered in undertaking the preliminary assessment.

---

<sup>2</sup> Impugned Judgment, para. 36.

47. On appeal, the Appellant submits that the OiC/OIOS had no authority to undertake the preliminary assessment. According to Section 5.4 of ST/SGB/2019/8 and Section 5.1 of ST/AI/2017/1 he was obliged to first forward the report to the OIOS/investigation division; only once this division determines that the responsible official can handle the matter will the responsible official be allowed to exercise the discretion to conduct the preliminary assessment. The investigation division of OIOS is the function mandated under Section 5.1 of ST/AI/2017/1 with the ultimate authority to decide which cases it will consider and to determine whether the information of unsatisfactory conduct merits any action.

48. Further, the Appellant argues that the UNDT exceeded its jurisdiction or competence when concluding that the ASG/OIOS considered that the reported conduct was not “a matter that could amount to misconduct”. The UNDT should have examined Section 2.1(h) of ST/AI/2017/1 which requires the responsible official or OIOS to determine whether there are “sufficient grounds” meaning that it is necessary to consider all the factors enumerated in Section 5.5 of ST/AI/2017/1.

49. These arguments are without merit. Like the UNDT we find that the preliminary assessment was procedurally correct.

50. Contrary to the Appellant’s submissions, according to ST/SGB/2019/8 and ST/AI/2017/1, the ASG/OIOS, pending the appointment of the new USG/OIOS, had authority to undertake the preliminary assessment. Sections 5.4 and 5.5 of ST/SGB/2019/8 read as follows:

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.

5.5 The preliminary assessment of a report of possible prohibited conduct, investigations of possible prohibited conduct and action taken subsequent to an investigation shall accord with the procedures set out in sections 5 to 12 of ST/AI/2017/1 and with the following additional requirements: ...

51. And ST/AI/2017/1 provides, in relevant parts:<sup>3</sup>

2.1 For the purpose of the present instruction:

(a) The “responsible official” is:

(i) The Secretary-General, for reported unsatisfactory conduct on the part of an Assistant Secretary-General or Under-Secretary-General;

(ii) The head of mission, for staff members administered by the Department of Field Support and serving in a peacekeeping mission or special political mission; however, the Under-Secretary-General for Field Support is the responsible official for the purposes of deciding whether to transmit an investigation report to the Assistant Secretary-General for Human Resources Management under section 7.7;

(iii) The respective Registrar, for staff members of the International Residual Mechanism for Criminal Tribunals and of the International Tribunal for the Former Yugoslavia;

(iv) The Under-Secretary-General for Internal Oversight Services, for staff members of the Office of Internal Oversight Services (OIOS); and

(v) The head of department or office of the subject staff member, for any other staff members;

...

(h) “Preliminary assessment” means the review and analysis by a responsible official or OIOS of information about unsatisfactory conduct in order to determine whether there are sufficient grounds to initiate an investigation.

...

4.3 Information about unsatisfactory conduct may be brought to the attention of:

(a) The responsible official, with a copy to OIOS; or

(b) OIOS.

If such information is provided anonymously, it must be brought to the attention of OIOS.

4.4 Information of unsatisfactory conduct relating to OIOS staff shall be brought only to the attention of the Under-Secretary-General for Internal Oversight Services.

...

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.

---

<sup>3</sup> Internal footnote omitted.

5.2 If OIOS decides to investigate the unsatisfactory conduct, the responsible official will defer to OIOS and cease all involvement in the matter.

5.3 If OIOS determines that the matter is better handled by the responsible official, it shall send the matter back to the responsible official, who shall conduct a preliminary assessment to determine whether an investigation is warranted.

5.4 The responsible official may enlist the assistance of other staff members in conducting the preliminary assessment and may make further enquiries, including from the person(s) (if any) reporting the unsatisfactory conduct, the subject(s) of the report of unsatisfactory conduct, other staff member(s) and/or third person(s) believed to have relevant information.

5.5 In undertaking the preliminary assessment, the following factors may be considered:

- (a) Whether the unsatisfactory conduct is a matter that could amount to misconduct;
- (b) Whether the provision of the information of unsatisfactory conduct is made in good faith and is sufficiently detailed that it may form the basis for an investigation;
- (c) Whether there is a likelihood that an investigation would reveal sufficient evidence to further pursue the matter as a disciplinary case;
- (d) Whether an informal resolution process would be more appropriate in the circumstances;
- (e) Any other factor(s) reasonable in the circumstances.

5.6 Upon conclusion of the preliminary assessment, the responsible official shall decide to either:

- (a) Initiate an investigation of all or part of the matters raised in the information about unsatisfactory conduct; or
- (b) Not initiate an investigation.

52. It follows from these provisions that the USG/OIOS as the responsible official in OIOS is the only authority to receive reports of unsatisfactory conduct relating to OIOS staff members. He or she is also responsible for the preliminary assessment and for taking the decision to either initiate an investigation or not initiate an investigation. There is no need for the USG/OIOS to first forward such reports to the OIOS/investigation division and await their approval for further handling the matter. Contrary to the Appellant's contentions, the second sentence of Section 5.4 of ST/SGB/2019/8 and Sections 5.1 to 5.3 ST/AI/2017/1 apply only to reports of unsatisfactory conduct relating to staff members other than OIOS staff. Only when such staff members are concerned, the "responsible official" under Section 2.1(a) of

ST/AI/2017/1 is not the USG/OIOS and can there be a need for OIOS to decide whether the case should be handled by OIOS itself or the responsible official (from units outside OIOS).

53. Section 4.4 of ST/AI/2017/1 clearly provides that information of unsatisfactory conduct relating to OIOS staff shall be brought only to the attention of the USG/OIOS who is the responsible official for OIOS staff under Section 2.1(a) of ST/AI/2017/1. By these provisions, it is assured that reports of unsatisfactory conduct relating to OIOS staff are always received and assessed by OIOS, namely by the USG/OIOS as the responsible official. Pending the appointment of the new USG/OIOS, the ASG/OIOS had subdelegated authority to undertake this preliminary assessment (see above).

54. Contrary to the Appellant's assertions, the preliminary assessment undertaken by the ASG/OIOS was in accord with Section 2.1(h) and Section 5.5 of ST/AI/2017/1. The goal of the preliminary assessment is to review a report of unsatisfactory conduct and determine whether there are sufficient grounds to initiate a disciplinary investigation (Sections 2.1(h) and 5.6 of ST/AI/2017/1). Section 5.5 of ST/AI/2017/1 enumerates certain factors which may be considered in undertaking the preliminary assessment.

55. The ASG/OIOS did not find sufficient grounds to initiate an investigation because he did not consider the actions of the Chief, HAS, IAD/OIOS to amount to misconduct. We find no fault in this handling of a preliminary assessment where the responsible official apparently focussed on Section 5.5(a) of ST/AI/2017/1. Only misconduct on the part of a staff member can lead to the imposition of disciplinary measures; consequently, if it becomes clear during the preliminary assessment that there is no misconduct, it is not necessary to initiate a fact-finding investigation. Although the responsible official may consider all the factors mentioned in Section 5.5 of ST/AI/2017/1, the crucial issue will always be whether the alleged actions amount to misconduct. The Appellant does not show, nor can we see, why any of the other factors mentioned in Section 5.5 of ST/AI/2017/1 could have led to a decision to initiate a fact-finding investigation. Even if the Appellant's report was made in good faith and was sufficiently detailed (Section 5.5(b)), an investigation would not seem necessary if there was no misconduct. If there is no misconduct, there is no likelihood that an investigation would reveal sufficient evidence to further pursue the matter as a disciplinary case (Section 5.5(c)). If there is no misconduct, it is clear that an informal resolution process would be more appropriate in the circumstances (Section 5.5(d)).



*Whether the decision not to initiate an investigation was reasonable*

56. The UNDT applied ST/SGB/2019/8 which collectively refers to discrimination, harassment and abuse of authority as “prohibited conduct” but provides that “[d]isagreement on work performance or on other work-related issues is normally not considered prohibited conduct and is not dealt with under the provisions of the present bulletin but in the context of performance management” (Section 1.1). After presenting the definitions for harassment and abuse of authority and reviewing the details of the allegations raised by Mr. Okwir and the reasoning of the contested decision, the UNDT found that the OiC/OIOS reasonably concluded that the allegations did not amount to prohibited conduct even if true. While there were tensions between Mr. Okwir and the Chief, HAS, IAD/OIOS, with regard to the monitoring of attendance and work performance, they were reasonably considered as work performance or other work-related issues. Furthermore, while Mr. Okwir was unsatisfied with the Director, IAD/OIOS’s actions in handling his complaint, the UNDT found that the OiC/OIOS reasonably concluded that the Director’s actions did not amount to prohibited conduct.

57. There is no error in the findings of the UNDT. According to the consistent jurisprudence of the Appeals Tribunal, the Secretary-General has broad discretion in administrative matters. As to judicial review of the Secretary-General’s discretion, we held:<sup>4</sup>

... When judging the validity of the Secretary-General’s exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General.

58. On appeal, Mr. Okwir states that the UNDT erred in finding that the ASG/OIOS reasonably concluded that the Director’s actions towards him did not amount to prohibited conduct. He contends that the UNDT exceeded its jurisdiction by substituting its opinion for that of the ASG/OIOS when the UNDT itself concluded that the Director’s actions were lawful. He further submits that the ASG/OIOS failed to consider the additional information submitted on 5 October and 23 October 2019 as becomes clear from his (second) 25 October 2019 e-mail

---

<sup>4</sup> *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, para. 40.

(“My decision was in reference to the complaint that the Appellant submitted to me on 3 October 2019”).

59. There is no merit in this argument. In his second e-mail dated 25 October 2019, the ASG/OIOS continued that he had “also today” e-mailed responses to the additional e-mails which Mr. Okwir had sent on 5 and 23 October 2019. It is evident from this e-mail that the ASG/OIOS received and reviewed Mr. Okwir’s e-mails dated 5 and 23 October 2019 and responded to them. In his comments to the MEU, the ASG/OIOS confirmed that he had found the Director’s responses to Mr. Okwir appropriate and that they were part of his assessment that there were insufficient grounds to initiate a fact-finding investigation.

60. We add, further, that Mr. Okwir’s formal complaint was limited to the Chief, HAS, IAD/OIOS as becomes clear from the “subject” of his various e-mails being “CONFIDENTIAL: Complaint of misconduct against Mr. KM”.

61. Mr. Okwir further complains that the UNDT erred in limiting itself to harassment and abuse of authority and did not review other allegations like discrimination and abuse of office, including breach of confidentiality. This argument is also without merit.

62. In Section 1.2 of ST/SGB/2019/8, discrimination is defined as “any unfair treatment or arbitrary distinction based on a person’s race, sex, gender, sexual orientation, gender identity, gender expression, religion, nationality, ethnic origin, disability, age, language, social origin or other similar shared characteristic or trait. Discrimination may be an isolated event affecting one person or a group of persons similarly situated or may manifest itself through harassment or abuse of authority.”

63. Mr. Okwir does not show, nor can we see, that the conduct by the Chief, HAS, IAD/OIOS was in any way motivated by any of the characteristics or traits (or similar) listed in Section 1.2 of ST/SGB/2019/8, or in which way Mr. Okwir was treated unfairly compared to other categories of staff members.

64. As to “abuse of office, including breach of confidentiality”, Mr. Okwir refers to Section 3.5(f) of ST/AI/2017/1 which provides the following:

3.5 Misconduct for which disciplinary measures may be imposed includes, but is not limited to:

...

(f) Misuse of office, including breach of confidentiality and abuse of United Nations privileges and immunities[.]

65. However, as becomes clear from the wording of Section 3.5(f) of ST/AI/2017/1, the goal of this provision is clearly not the protection of specific staff members but of the Organization itself. Therefore, a staff member cannot, before the Tribunals, request that a fact-finding investigation should be initiated against another staff member because he or she allegedly committed misuse of office in the meaning of Section 3.5(f) of ST/AI/2017/1.

66. As the Appeals Tribunal stated in *Nwuke*:<sup>5</sup>

... A staff member has no right to compel the Administration to conduct an investigation unless such right is granted by the Regulations and Rules. In such cases, it would be covered by the terms of appointment and entitle the staff member to pursue his or her claim even before the UNDT, and, after review, the Tribunal could order to conduct an investigation or to take disciplinary measures.

67. It is doubtful whether ST/SGB/2019/8 conferred upon the Director, IAD/OIOS a duty of confidentiality towards Mr. Okwir. While Section 4.9 of ST/SGB/2019/8 (confidential support) expressly states that the Office of the United Nations Ombudsman and Mediation Services and the Staff Counsellor “are bound by strict rules of confidentiality” and “[a]ny discussion with them is strictly confidential”, Sections 4.2 to 4.6 of ST/SGB/2019/8 (managerial intervention) do not contain such a requirement. Section 4.3(a) merely provides that supervisors may, with the consent of the affected individual, bring the matter to the attention of the alleged offender.

68. Even if the Director, IAD/OIOS was bound by strict confidentiality resulting from ST/SGB/2019/8, Mr. Okwir does not show, and we cannot see, that he can claim that a fact-finding investigation should be undertaken against the Director for having violated her duty of confidentiality.

69. Under the consistent jurisprudence of the Appeals Tribunal, a fact-finding investigation may only be undertaken if there are “sufficient grounds” or, respectively, “reason(s) to believe that a staff member has engaged in unsatisfactory conduct for which a disciplinary measure

---

<sup>5</sup> *Nwuke v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-099, para. 30

may be imposed”.<sup>6</sup> Contrary to Mr. Okwir’s assertions, this jurisprudence is still valid and also applies to the new framework as laid out in ST/SGB/2019/8 and ST/AI/2017/1. Consequently, if there are no such grounds or reasons, the Administration is not allowed to initiate an investigation against a staff member. This is due to the fact that the mere undertaking of an investigation may have a negative impact on the staff member concerned.

70. In the present case, Mr. Okwir has not presented any reasons to believe that the Director, IAD/OIOS could have shared information with the Chief, HAS, IAD/OIOS. In his 5 October 2019 e-mail, Mr. Okwir stated that the Chief, HAS, IAD, OIOS, on 2 September 2019, used the same words as the Director when responding to his 2 September 2019 e-mail (in a 3 September 2019 telephone conversation). He continues that “this could be coincidental, but I understand that the Director spoke to K about the matter and could have exchanged emails”. On appeal, Mr. Okwir alleges that the Director involved the Chief, HAS, IAD/OIOS to draft the e-mail of the Director on her instruction which was later sent to him.

71. Mr. Okwir’s contentions are mere speculations without any factual basis. Therefore, they cannot form any basis to believe that the Director could have shared information on Mr. Okwir’s complaint with the Chief, HAS, IAD/OIOS.

72. Finally, we agree with the UNDT that the actions by the Chief, HAS, IAD/OIOS and the Director towards Mr. Okwir do not amount to prohibited conduct (harassment, abuse of authority) but fall in the realm of workplace disagreements. According to Section 1.1 of ST/SGB/2019/8, disagreement on work performance or on other work-related issues is normally not considered prohibited conduct and is dealt with in the context of performance management. There is nothing in the Chief’s and Director’s actions and communication which goes beyond normal and acceptable behaviour of superiors.

*Request for referral for accountability*

73. Mr. Okwir requests that the Appeals Tribunal refer the Chief and Director for possible action to enforce accountability.

---

<sup>6</sup> *Nadeau v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-733/Corr.1, para. 34.

74. However, as stated above, the Appeals Tribunal agrees with the UNDT that the actions by the Chief and Director fall in the realm of workplace disagreements. Therefore, the request is denied.

**Judgment**

75. Mr. Okwir's appeal is dismissed and the UNDT Judgment is affirmed.

Original and Authoritative Version: English

Dated this 18<sup>th</sup> day of March 2022.

*(Signed)*

Judge Knierim, Presiding  
Hamburg, Germany

*(Signed)*

Judge Raikos  
Athens, Greece

*(Signed)*

Judge Halfeld  
Juiz de Fora, Brazil

Entered in the Register on this 19<sup>th</sup> day of May 2022 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar