



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2020/035

Judgment No.: UNDT/2021/045

Date: 28 April 2021

Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

MONNIER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Jonathan Croft, ALD/OHR, UN Secretariat

Miryoung An, ALD/OHR, UN Secretariat

Notice: This Judgment has been corrected in accordance with art. 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

Introduction

1. The Applicant, a staff member of the United Nations Environment Programme (“UNEP”), appeals the Administration’s decision not to pursue his complaint of harassment against his supervisor.

2. On 27 August 2020, the Respondent replied that the application is without merit.

3. For the reasons stated below, the Tribunal finds that the Administration did not exceed its jurisdiction in deciding not to initiate disciplinary proceedings following the Applicant’s complaint of harassment and therefore dismisses the application.

Facts

4. On 26 September 2018, the Applicant submitted a formal complaint under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment and abuse of authority) to the Executive Secretary, Secretary of the Convention on Biological Diversity, UNEP, referring allegations of sexual harassment and retaliation by his former supervisor.

5. Upon UNEP’s referral on 10 January 2019, the Office of Internal Oversight Services (“OIOS”) investigated the allegations and submitted its report to the Office of Human Resources on 28 June 2019.

6. On 14 February 2019, the Assistant Secretary-General for Human Resources (“ASG/OHRM”) notified the Applicant that having reviewed the investigation file, she found the evidence insufficient to substantiate the allegations of prohibited conduct. She further informed the Applicant that his testimony regarding the alleged unwelcome sexual conduct lacked credibility and was not supported by the evidence. She added that his supervisor’s testimony was found to be more credible. The ASG/OHRM therefore decided not to pursue the matter further.

Consideration

Legal framework

7. The Tribunal recalls that a decision to initiate a disciplinary process falls within the discretion of the Administration (see, for instance, *Abboud* 2010-UNAT-100, para. 34, *Nadeau* 2017-UNAT-733, para. 33 and *Auda* 2017-UNJAT-787, para 30).

8. In *Sanwidi* 2010-UNAT-084 (para. 40), the Appeals Tribunal established that in reviewing the Administration's use of its discretionary power, the Dispute Tribunal is not to consider the correctness of the decision, but rather whether such decision was legal, rational, procedurally correct and proportionate. In doing so, the Dispute Tribunal will consider whether relevant matters had been ignored and irrelevant matters considered and can examine whether the decision was absurd or perverse.

9. ST/SGB/2008/5 sets up the following procedure after the receipt of a formal complaint of prohibited conduct:

5.14 Upon receipt of a formal complaint or report, the responsible official will promptly review the complaint or report to assess whether it appears to have been made in good faith and whether there are sufficient grounds to warrant a formal fact-finding investigation ...

5.15 At the beginning of the fact-finding investigation, the panel shall inform the alleged offender of the nature of the allegation(s) against him or her ...

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, giving a summary of the findings and conclusions of the investigation ...

Discussion

10. The Applicant claims that his due process rights were violated because OIOS believed his supervisor over him and ignored some of the information he provided in support of his complaint.

11. The Applicant restates the allegations listed in his complaint, providing further details of the alleged events. He also adds allegations of events occurred after the date on which the complaint was submitted.

12. The Applicant questions whether certain witnesses who, in his submission, would corroborate his accounts of the events, were interviewed and argues that he was not in a position to “tell the investigators whom to interview”. He infers that the investigators, who he claims were biased against him, “cherry-picked those [witnesses] who had the [supervisor’s] version”.

13. He states that despite all the chronological details he provided, “evidence was not pursued”. The Applicant states that the investigators informed him that they would interview other witnesses and then contact him, he therefore expected to be re-interviewed for confirmation and/or further details. However, this never occurred.

14. The Applicant is “surprised” by and contests some of the witnesses’ statements as well as the conclusions drawn by OIOS of some of the documentary evidence gathered during the investigation.

15. Finally, the Applicant restates the allegations put forward in the original complaint.

16. The Respondent responds that OIOS interviewed the Applicant, his supervisor, who was the subject of the complaint and several witnesses in compliance with ST/SGB/2008/5.

17. The Respondent contends that the Applicant's allegations that the investigation ignored critical elements lack specificity and support. He clarifies that the names of the additional alleged witnesses cited in the application were not provided to the investigators in due course. Moreover, the Applicant fails to explain how those individuals would establish the alleged events or why they were brought to light over a year after the formal complaint was submitted.

18. The Respondent avers that OIOS found a plausible explanation for the Applicant having filed the complaint.

19. The Tribunal recalls that in application of the jurisprudence cited above, it is not its role to evaluate the correctness of the contested decision but rather examine whether the Administration respected the bounds of its discretionary power in reaching it.

20. In his complaint of 26 September 2018, the Applicant alleges that he declined his supervisor's sexual advances. These incidents occurred, according to the complaint, during two separate business trips to Nairobi and Bangkok, both in 2014. The Applicant further alleges that following his rejection, his supervisor engaged in several instances of retaliation in the ensuing years.

21. The summary of the investigation provided by the Respondent shows that the investigators interviewed the Applicant, as well as his former supervisor as subject of the complaint, who denied the Applicant's account of the events.

22. With respect to the first alleged incident of sexual misconduct, occurred during the trip to Nairobi in 2014, OIOS found that the allegations were not established by the evidence because the supervisor denied the accusations and the only named witness had no recollection of the events as recounted by the Applicant.

23. OIOS also questioned the supervisor with respect to the allegations of unwelcome sexual conduct during the Thailand trip, also in 2014. The supervisor also denied the Applicant's account of the events.

24. With respect to this alleged incident, OIOS further reviewed the documentation identified by the Applicant in support of these allegations. In particular, OIOS examined the email exchanges concerning the preparations for the travel to Thailand. The Applicant claimed that these emails showed that his supervisor had taken a personal deviation through Bangkok in order to spend one day alone with him. He further referred to email exchanges in which his supervisor proposed to buy him dinner and "find him a husband".

25. OIOS found that the travel documents did not show a personal deviation through Bangkok but rather a duly approved stopover. The travel documents further showed that the Applicant and his supervisor stayed in the same hotel in separate rooms. While the email exchanges showed an ill-advised familiar tone between the supervisor and the Applicant, they do not substantiate the Applicant's allegations of unwelcome sexual conduct.

26. OIOS further questioned the supervisor and several witnesses with respect of the events occurred as of August 2016, which according to the Applicant, constituted retaliation for having rejected his supervisor's sexual advances. OIOS did not discover any evidence to substantiate the allegations. OIOS concluded that a plausible explanation for the Applicant's complaint against his supervisor was the fact that the latter criticized the Applicant's performance and ethics on several occasions, as well as the long history of difficult interactions between the Applicant and his team, which included a series of formal complaints and counter-complaints.

27. The Tribunal notes that while the Applicant alleges that evidence was ignored and that OIOS investigators were biased against him, he provides no detail in support of these assertions.

28. In the application, the Applicant questions whether a series of individuals were interviewed by OIOS. However, said individuals were not named in the complaint nor does the Applicant assert that he provided these names to OIOS during his interview in the course of the investigation. The Applicant claims that he was unable to provide the names of the witnesses but does not explain why. The Applicant also fails to show how these potential witnesses would be in a position to support the claims detailed in the 26 September 2018 complaint.

29. Having reviewed the complaint and the summary of the investigation findings, the Tribunal is satisfied that OIOS interviewed all relevant witnesses with respect to the incidents of alleged sexual misconduct and reviewed the available documentation. The Tribunal is also satisfied that the conclusion that the evidence does not support that unwelcome sexual conduct occurred during the trips to Nairobi and Thailand is supported by the record and is rational. The Applicant has not been able to show that these findings were motivated by bias against him.

30. With respect to the alleged instances of retaliation which occurred as the result of these events, the Tribunal is satisfied from the record that OIOS interviewed the relevant witnesses. The Tribunal further finds no irrationality in the conclusion that the complaint may have resulted from the deterioration of the Applicant's relationship with his supervisor and his team.

31. With respect to the Applicant's allegations that his procedural rights were violated, the Tribunal notes that following the filing of the 26 September 2018 complaint and its referral to OIOS, OIOS interviewed the Applicant, his former supervisor as well as several witnesses. OIOS reviewed the documents referred to by the Applicant in his complaint.

32. Following the completion of the investigation, the ASG/OHRM informed the Applicant that she did not find that the evidence supported the Applicant's allegations of prohibited conduct and that she would not pursue the matter further.

33. In light of this observations, the Tribunal does not find that relevant matters were ignored or irrelevant matters considered and concludes that the decision was not absurd or perverse.

34. The Tribunal is satisfied that the procedure set in ST/SGB/2008/5 was properly followed.

35. From the above, the Tribunal finds that the Administration made proper use of its discretionary power in reaching the contested decision.

Conclusion

36. The application is dismissed in its entirety.

(Signed)

Judge Joelle Adda

Dated this 28th day of April 2021

Entered in the Register on this 28th day of April 2021

(Signed)

Nerea Suero Fontecha, Registrar, New York