



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2011/039

Judgment No.: UNDT/2012/095

Date: 27 June 2012

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decision to abolish his post and reassign him to the position of Senior Legal Adviser was tainted by irregularities and motivated by extraneous considerations. He further explained that the decision in question had been preceded by prohibited conduct on the part of his first and second reporting officers, consisting of (i) “baseless accusations” made by the Officer-in-Charge of DTA that the ApkbcvybMFLArrthearbMFLAr,vp

8. Under cover of a subsequent letter of 8 December 20

section 5.13 of ST/SGB/2008/5 were mandatory and that the Applicant's communications prior to that of 8 March 2011 did not satisfy these requirements since they attached copies of documents submitted to other bodies or loosely titled "to whom it may concern" and they "covered the broader review of contested administrative decisions, which addressed a multitude of other issues". Only the communication of 8 March 2011 provided a "decipherable description" of his grievances but the issues raised therein were, in the opinion of the Director of the Division for Management, disagreements on work performance, thus excluded from the scope of ST/SGB/2008/5.

14. On 4 May 2011, the Applicant submitted a request for management evaluation, in which he challenged inter alia the decision not to investigate nor take action in response to the documents of 31 January, 1 and 8 December.

15. By letter dated 17 June 2011, the Applicant was notified that, in the view of the Secretary-General, insofar as the matters which formed the subject of the documents of 31 January, 1 and 8 December were before the Tribunal, it was inappropriate for the Administration to take action. The Applicant was further advised to pursue his allegations of prohibited conduct in accordance with section 5.13 of ST/SGB/2008/5.

16. On 20 July 2011, the Applicant filed with the Tribunal the application which forms the subject of this Judgment.

17. On 12 August 2011, the Tribunal issued Judgment UNDT/2011/142 in Case No. UNDT/GVA/2010/082. It noted that the Applicant's post had not been abolished, and found that his reassignment was justified by the restructuring of TPB. It further rejected his allegations of harassment on procedural grounds.

18. On 31 December 2011, the Applicant was separated from service.

19. A hearing was held on 18 April 2012, which the Applicant and Counsel for the Respondent attended by videoconference.

Parties' submissions

20. The Applicant's principal contentions are:

a.

21. The Respondent's principal contentions are:

a. The email of 28 April 2011 provides a duly considered response including the reasons why the Administration, though willing to act on the Applicant's reports, required him to adhere to the provisions of ST/SGB/2008/5;

b. The specific requirements prescribed in section 5.13 are to be adhered to in order to facilitate a clear record of what the staff member believes to be the complaint, and for the Administration to assess whether such report appears to have been made in good faith and whether there are sufficient grounds to warrant a fact-finding investigation;

c. The Applicant's communications contained mere references to or included copies of submissions made before internal justice bodies and they addressed a multitude of other issues. They did not provide a clear, succinct, comprehensive or comprehensible statement of his allegations. The Applicant should have, at least, given a reasonable explanation as to why his reports did not comply with section 5.13 of ST/SGB/2008/5 and the Respondent should not be left to guess or assume what is being claimed;

d. In spite of the fact that the Applicant was invited to resubmit his allegations in line with section 5.13, he did not make any submission after 8 March 2011;

e. The way in which the Applicant presented his communications led the AdminLhrkMvcp,cYLerbv,-ccpL rkHbvFb,YLRrkFvpMHLvcp,cYlMrkHMvccM-LHLerk-v,p-L

g. The Applicant failed to request management evaluation of the alleged violation of the right to the integrity of the management evaluation process. This contention should therefore be considered irreceivable. Further, in view of the seriousness of his contention, the Applicant should be ordered to provide convincing evidence and, in the event he does not, subjected to sanctions and directed to issue a written apology.

Consideration

22. At the outset, it should be recalled that the Tribunal has jurisdiction to examine the Administration's actions and omissions following a request for investigation submitted pursuant to the Secretary-General's bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) (see, in particular, Nwuke 2010-UNAT-099).

Whether the Administration had a duty to take prompt and concrete action in response to the Applicant's allegations

23. ST/SGB/2008/5 relevantly provides:

Section 5

Corrective measures

...

5.3 Managers and supervisors have the duty to take prompt and concrete action in response to reports and allegations of prohibited conduct. Failure to take action may be considered a breach of duty and result in administrative action and/or the institution of disciplinary proceedings ...

...

Formal procedures

5.11 In circumstances where informal resolution is not desired or appropriate, or has been unsuccessful, the aggrieved individual may submit a written complaint to the head of department, office or mission concerned ...

5.13 The complaint or report should describe the alleged incident(s) of prohibited conduct in detail and any additional

27. Even accepting that the reason why the Administration did not react earlier to the document of 31 January is because the format in which the Applicant's allegations had been presented led the Administration to believe that the matters were under the Tribunal's review, the Tribunal considers that the Administration's delay in responding to him is still unreasonable. It is true that, when filing Case No. UNDT/GVA/2010/082 on 27 April 2010, the Applicant reiterated parts of the content of the document of 31 January in the application form and that he appended this document to the form. Nonetheless, almost three months had already elapsed between the time when the Applicant first referred his allegations to the UNODC Executive Director and the time when the application registered under Case No. UNDT/GVA/2010/082 was transmitted to the Respondent for his reply.

Were there sufficient grounds to warrant a formal fact-finding investigation?

28. Section 5.14 of ST/SGB/2008/5 states:

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.

29. The Applicant challenges the Administration's failure to take action on his reports of misconduct. The Tribunal must therefore determine whether the Applicant's allegations, in the form in which they were then submitted to the Executive Director, provided "sufficient grounds" to warrant a formal fact-finding investigation. In so doing, it bears in mind that section 1.2 of ST/SGB/2008/5 defines harassment and abuse of authority respectively as follows:

1.2 Harassment is any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person. Harassment may take the form of words, gestures or actions which tend to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another or which create an intimidating, hostile or offensive work environment. Harassment normally implies a series of incidents. Disagreement on work performance or on other work-related issues is normally not considered harassment and is not dealt with under

33. In the document, the Applicant also stated:

[T]he ... decision to remove me from my current position has been prec[e]ded by a number of prohibited conducts including bullying (mobbing) and harassment. They also included acts aimed at discrediting me, tarnishing my reputation and humiliating me. In my view, those prohibited conducts pursued the aim of preparing the ground for arbitrarily reducing my functions and eventually removing me from my cur[r]ent position.

34. The Applicant then described several incidents which, in his opinion, had “prepared the ground” for the decision to abolish his post and reassign him, namely: (i) “baseless accusations” made by the Officer-in-Charge of DTA that the Applicant had jeopardized the UNODC relations with a determined government; (ii) the fact that the Chief of TPB had assigned technical assistance missions to junior staff members rather than to the Applicant; (iii) the fact that the Chief of TPB had effectively removed him from his functions of Chief of the Counter-Terrorism Legal Services Section I without prior notification or reply to his questions and, (iv) the comments he had received in his 2009-2010 mid-point performance review.

35. Even assuming that the “earlier” incidents referred to by the Applicant in the document of 31 January were considered by him as further instances of prohibited conduct, the Tribunal notes that no indications were given as to the dates or factual circumstances of these incidents. Nor did the Applicant reflect the content of the comments he had received in his 2009-2010 mid-point performance review.

36. Taking into account all of the circumstances, the Tribunal considers that the document of 31 January, which was not even signed by the Applicant (see section 5.13(f) of ST/SGB/2008/5), did not provide sufficient detail for the responsible officer, in this case the Executive Director, to assess whether there were sufficient grounds to warrant a formal fact-finding investigation.

in the document of 8 December superseded those contained in the document of 1 December.

42. In the 36-page document, the Applicant challenged t

a high rate of technical assistance delivery”, and that “[h]is contributions ... ha[d] drawn appreciation from member States as well as from partnering organizations”, thus tempering their assessment. In view of this, the Tribunal finds that the comments made in the appraisal did not provide sufficient grounds to warrant a formal fact-finding investigation.

46. Lastly, the Tribunal rejects the Applicant’s allegations that the Administration’s actions amount to constructive dismissal and that the management evaluation process was tainted by partiality as these have no bearing on the issues raised in the application.

47. The Respondent asks the Tribunal to order the Applicant to provide evidence of his allegation that the management evaluation process was tainted by partiality, failing which it should subject him to sanctions and direct him to issue a written apology. In the case at hand, the Tribunal finds no grounds to make such a determination and therefore rejects the Respondent’s request.

Compensation

48. In Appellant 2011-UNAT-143, the Appeals Tribunal upheld the Dispute Tribunal’s finding that the prejudice caused by the Administration’s failure to respond to the appellant’s complaint warranted compensation (see also Shkurta

2011-UNAT-148, whereby the cHLsrpvFFbFpL rkYM,v-YpLfrYvp,ycHLirMvyMpYM-LnLhrkMvcbM

Conclusion

51. In view of 16