



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2011/019
Judgment No.: UNDT/2013/013
Date: 29 January 2013
Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Jean-Pelé Fomété

COOPER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Bart Willemsen, OSLA

Counsel for the Respondent:

Steven Dietrich, ALS/OHRM

Introduction

1. On 24 January 2011, the Applicant, Head of Office, the Office for the Coordination of Humanitarian Affairs (“OCHA”), Kenya, received from Ms. Valeria Amadio, the Under-Secretary-General for OCHA (“USG/OCHA”), a written reprimand following an investigation into allegations against her for harassment and abuse of authority.

2. On 20 April 2011, the Applicant filed an Application in which she contends that the decision to impose the written reprimand was in violation of her right to a fair process. The Respondent filed a Reply on 23 May 2011.

Facts

3. The Applicant joined the Organization on 22 April 2003 as a Humanitarian Affairs Officer on an intermediate-term appointment at the L2

complainants and submitted its final report to the ASG/OCHA on 21 October 2010.

7. The Panel concluded that there wa037.2 Tm [(o)-32(f)13()] TJ ET Q q BT /F1 11.28 Tf 0.0

- b. She considered the investigation Panel's findings. The report indicated that there was a factual basis for some of the allegations of harassment and abuse of authority.
- c. The Panel's findings indicated poor managerial behavior falling below the standard expected but there were mitigating factors present. For example, the Applicant was adversely affected by the rapid growth of the OCHA Nairobi office from 2 to 26 staff members within a year and she was promoted relatively quickly from a P-4 to a P-5.
- d. She also relied on the Panel's observation that the Applicant's behavior and managerial style improved upon participating in the Management Development Programme.
- e. She reached the conclusion that the investigation Panel's findings revealed performance shortcomings rather than misconduct, therefore, managerial action was the most appropriate course of action.
- f. Her decision to reassign the Applicant was both in the interests of OCHA and the Applicant, as it was not fair to the Applicant to keep her in a job which she could not do.
- g. The decision to require the Applicant to undergo training gave the Applicant the opportunity to address her performance shortcomings and to advance her career within OCHA.
- h. She took the contested decision in her role as the 'responsible official' as identified in para. 5.11 of ST/SGB/2008/5 and pursuant to para. 5.18(b) of ST/SGB/2008/5.
- i. She had a meeting with the Applicant in Nairobi where she explained to the Applicant the reasons for her decision to take managerial action.

17. Staff rule 10.2(b) (i) provides that an oral or written reprimand is considered to be a non-disciplinary measure. The Applicant submits, with reference to the terms indicating that the list of measures included in staff rule 10.2(b) is not exhaustive, that a forced reassignment must also be considered a non-disciplinary measure, in particular if imposed pursuant to an investigation into potential misconduct and premised on the findings of that same investigation.

18. Ms. Amos imposed both the written reprimand and reassignment following a procedure that ignores all of the due process protections incorporated in staff rule 10.3(a). It is correct that Ms. Amos, as the responsible official, was authorized under Section 5.18(b) of ST/SGB/2008/5 to impose the reprimand and reassignment. However, this is immaterial if the procedure upon which her decision was founded stands in conflict with other

20. In the instant case, the Applicant did not receive the complaints in writing, the transcripts of the interviews with the other witnesses were never disclosed to her, she was never shown the final report upon which the decisions to reprimand and reassign her was based and at no point prior thereto was she informed she could consult with Counsel. A written reprimand will have serious ramifications for her professional career and her personal life. A forced reassignment in

nature of the complaints against her in accordance with para. 5.15 of ST/SGB/2008/5. The Applicant's responses to each of the 26 allegations are incorporated in the investigation report and formed the basis of the Panel's findings. The procedure followed in this case complied with ST/SGB/2008/5. Furthermore, if the Applicant had grounds to believe that the procedure under ST/SGB/2008/5 was not followed, para. 5.20 cedB/se

Was the procedure for reviewing complaints of harassment ~~unsubstantiated~~ authority prescribed in ST/SGB/2008/5 followed in respect to the Applicant?

38. Under this heading, the Applicant submitted that it was not the responsible official who reviewed the complaints against her to assess whether they appeared to have been made in good faith and whether there were sufficient grounds to warrant a formal fact-finding investigation. She further argued that the Secretary-General failed to produce evidence that would suggest that there is more than one responsible official in OCHA and that this must result in the conclusion that the institution of the fact-finding investigation was unlawful and all decisions taken on the basis of this fact-finding investigation were therefore null and void, including the written reprimand and the Applicant's reassignment.

39. Paragraph 5.14 of ST/SGB/2008/5 provides that it is for the responsible official to 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. Paragraph 5.11 of ST/SGB/2008/5 defines "responsible officials" as the head of department, office or mission concerned, except in those cases where the official who would normally receive the complaint is the alleged offender, in which case the c

form of a written reprimand. The Applicant was required to request a management
evaluation of the contested de11(n)0(B) [(1)-3s3(n)9(t)-20(Tf 0 0)-723(n)9(t 0 -3(s-7(h)9(e)-3()--5(d)-)

rule 10.2 following the completion of a disciplinary process is not required to request a management evaluation.

45. The Tribunal finds as follows:

- a. A written reprimand is not a disciplinary measure as stipulated by paras 5.18(b) and (c) of ST/SGB/2008/5 but is considered a managerial action.
- b. To challenge the managerial action of a written reprimand, the Applicant was required to appeal pursuant to chapter XI of the Staff Rules.
- c. The exemption from requesting management evaluation under staff rule 11.2 (b) does not apply to managerial action taken under paras. 5.18(b) and (c) of ST/SGB/2008/5 since this action was not taken following the completion of a disciplinary process.

46. The Applicant had argue6(-)346(c)9(o)-11(t)-27(a)38(p)-11(p)-11(ly)52(-)5(to)-32(-)5(m) -981

