



UN

BI/2010/012/
1589

f/2011/106

June 2011

English

Before

Request

Request

GENERAL
REGULATIONS

ANNEX

Council
General

Council
Secretary

Human Resources Unit, ALS/OHRM

Introduction

1. The Applicant entered into service with the Organisation on 1 February 2000 at the United Nations Mission in Bosnia and Herzegovina (UNMIBH) and was deployed in February 2003 to the United Nations Transitional Administration in East Timor (UNTAET) at the P-3 level before joining the United Nations Operation in Burundi (ONUB) on 20 October 2004 as Chief, Joint Logistics Operations Centre (JLOC) at the P-4 level.

2. Following allegations made against him by a staff member working under his supervision (“the Complainant”), the Applicant was charged with misconduct and summarily dismissed from ONUB. The Applicant is contesting the decision dated 9 January 2008 summarily dismissing him from service effective 17 January 2008 on the basis of the following charges:

- a. Sexual and general workplace harassment of the Complainant;
- b. Attempted abuse of authority as the Complainant’s former supervisor and retaliatory conduct;
- c. Interfering with an official investigation into the allegations made against him;
- d. Failing to follow directions and instructions properly issued by his supervisors; and
- e. Acting in a manner unbecoming of his status as an international civil servant.

Facts

3. On 2 November 2004, the Applicant recommended the recruitment of the Complainant to fill the vacant post of a Logistics Assistant within his unit. The Complainant was appointed to the post on 15 February 2005 under the Applicant’s supervision.

4. The Complainant served in JLOC for three months. On 21 May 2005, she made a complaint against the Applicant alleging harassment following which she was transferred to another unit on 23 May 2005.

her new supervisor and by expressing an interest to have input into her performance appraisal.

11. OIOS further concluded that the Applicant had failed to follow the directions and instructions properly issued to him by his supervisors by contacting the Complainant and her

c. There was no evidence that the Applicant interfered or attempted to interfere with the investigation of the allegations against him. The Administration disposed of the requisite burden of proof to show that the Applicant failed to follow duly authorised instructions.

d. The Administration violated th

35. There was no prejudice, improper motive or other extraneous factors behind the decision to summarily dismiss the Applicant.

36. The Applicant's misconduct was established and amounts to serious misconduct. Consequently, the disciplinary sanction of summary dismissal was proportionate to the offence committed by the Applicant.

37. On the basis of the foregoing, the Respondent requests the Tribunal to dismiss each and all of the Applicant's pleas.

Considerations

Sexual Harassment

39. In paragraph 2 of ST/AI/379, sexual harassment is defined as:

Any unwelcome sexual advance, request for sexual favours or other verbal or physical conduct of a sexual

42. OIOS which had conducted an investigation in this case analysed and summarised what had happened between the Complainant and the Applicant in light of a sexual harassment allegation thus:

For the past five years [the Applicant] had been trying to initiate sexual relations with [the Complainant]. She had made it quite clear that she was not interested, but there is no clear evidence to suggest that his requests for sexual favours interfered with her work, was a condition of employment or that they created a hostile or offensive working environment. There is also no evidence to indicate his sexual advance (attempted kiss in his hotel room) or his conduct of a sexual nature (the emailing of the photograph of his penis) had any detrimental impact upon the workplace. [The Complainant's] comments regarding J and A on 15 March 2005 read more of a joke than anything and put into perspective her response to the photograph. Her MSN Messenger communication with [the Applicant] following the incident indicates a rather jovial working and personal relationship that had not been negatively impacted by the attempted kiss and/or receipt of the penis photograph. Collectively the evidence indicates the Complainant was a willing participant in a five-year relationship with numerous sexual overtones that were of limited significance to her and did not encroach upon the ONUB workplace.

43.

of the Complainant were not in issue before the Tribunal, her conduct with the Applicant in this regard becomes relevant for the purpose of determining the truth in a sexual harassment allegation in this case.

50. Indeed while she was still on leave on April 29 2005 and less than four weeks before she would be reassigned based on her complaint against the Applicant, he had wanted to know what she thought about moving temporarily to the procurement section. In spite of her being recently upset about an airport incident barely a week before in which the Applicant had exhibited his bad habit of prying into her private friendships with others and possessiveness towards her, the Complainant refused the opportunity of a reassignment from JLOC when asked by the Applicant. Part of her email to his suggestion read “what matters to me most is I do not want to let U (sic) down...I know how important I am for you in JLOC and how much you rely(sic) on me there.”

51. She went on to ask that he put everything on hold until she returned and proceeded to discuss some other issues. She definitely did not find the workplace intimidating or hostile up until that point due to the actions of the Applicant and she was not afraid that her employment was at risk.

52. A person who claims that a particular workplace became intimidating, hostile or offensive in addition to affecting her emotionally and physically would not, in the face of a possible reassignment, choose to remain in such a workplace.

53. There is no evidence that established that the work place had become intimidating, hostile or offensive for her. The *ipse dixit* of the Complainant on this issue without more, is certainly not enough to establish the allegation. The emails between the parties do not reveal a sexually harassed supervisee and there is no evidence from any work colleague that has testified to this allegation. The charge of

55. On 11 February 2008 the Secretary-General published a bulletin ST/SGB/2008/5 (Prohibition of Discrimination, Harassment, Including Sexual Harassment, and Abuse of Authority) dealing with and defining the prohibition of harassment among other unacceptable types of conduct. In section 1.2, harassment is defined as:

Any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person. It 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.

56. As at 2005 when the incidents that gave rise to the charges against the present Applicant occurred however, these definitions were not yet in place although ST/AI/371 (Revised Disciplinary Measures and Procedures) of 2 August 1991 in its section 2(d) cited “harassment” against other staff members as a conduct for which a disciplinary measure may be imposed. Staff Rule 101.2(d), then in force, prohibited discrimination or harassment of any kind and is actually relied upon and forms the basis for the present charge by the Respondent. The staff rule states that “any form of discrimination or harassment, including sexual or gender harassment, as well as physical or verbal abuse at the workplace or in connection with work, is prohibited.”

57. Inasmuch as the 2008 Secretary-General’s Bulletin clarified the elements of harassment in defining it, nothing has changed in the way the Tribunal would view the subject as it pertains to whether an alleged harassment took place before or after the 2008 promulgation.

58. Workplace harassment will necessarily arise in a situation in which the common thread that links the harasser to the victim is the fact that they work together. The harassment complained of must be occasioned by the singular fact of a working relationship between the parties which is then exploited by the perpetrator.

59. Workplace harassment must consist of improper and unwelcome conduct. Such conduct must be unwelcome in the sense that the alleged victim did not solicit, incite or court the conduct and regarded it as undesirable and offensive. Another element of workplace harassment is that the conducts complained of must have the purpose or effect of unreasonably interfering with the Complainant’s work performance or creating an offensive, hostile, intimidating or abusive work environment. In other words, such conduct must

interfere with the employee's ability to perform the job, causing work performance to suffer or negatively affecting job opportunities.

60. It is necessary to consider in this case the totality of the circumstances in ascertaining whether the work environment was rendered hostile, abusive or offensive and also that the conduct complained of was based on a work relationship and was unwelcome if a charge of workplace harassment is to be sustained.

61. In her 8 January 2007 report to the Joint Disciplinary Committee on allegations of misconduct against the Applicant, the ASG/OHRM in parts of paragraphs 60-64 stated with regard to the subject of workplace harassment as follows:

60. In the present case, the friendship between [the Applicant] and [the Complainant], or the issues surrounding its breakdown, clearly impacted on their mutual workplace at ONUB. **Indeed, [the Complainant's] recruitment to ONUB as an international staff member was directly linked to her relationship with [the Applicant] and his desire that they sh**

62. There is no basis for determining that the friendship between the Applicant and the Complainant or that its breakdown impacted

her friend and housemate that she was afraid that the Applicant would sack her and that her family would suffer as a result? Was it because as she professed to him, she did not want to let him down, was very important to him at work and he relied on her for the unit to function and in what way? Why did she refuse to grab with both hands the opportunity of a reassignment away from her workplace harasser on 29 April 2005? Why did she invite the Applicant and his wife for drinks on 15 May? Why did she refuse the Applicant's offer on the phone on 20 May 2005 to speak to the CISS for her to be transferred to another section? What agenda did the Complainant want to complete at JLOC before she would leave the unit only three days later?

67.

69. At paragraph 73 of its report, the JDC while making a finding of workplace harassment observed that “*there is evidence that the conflict more likely than not spilled over into their work environment.*” In the same paragraph, the Panel also found that:

While there is no indication of ill will towards her continued employment at the mission, it does indicate that the situation had reached a point (even if their colleagues in the office failed to notice it) where the matter could not but affect their professional environment given the proximity at which they worked. ... Under these circumstances, there is no reason to presume that this would affect their situation during non-working hours only.

70. The OIOS stated in its report that on occasions emails were exchanged at work. At paragraph 15, the said report stated that the Complainant told investigators that the Applicant’s jealousy had begun to negatively impact on their working relationship. She told them also that she was afraid to open her email at work as there would often be an email from the Applicant wanting to know who she was with the night before and that at the end of the work day, he would often ask her to stay behind to discuss work-related matters but would soon confront her concerning her activities the previous night.

71. If indeed the Applicant had put the Complainant in fear of opening her email at work because he would email to ask who she had been with or confront her at work with such a question, this Tribunal will make no hesitation in concluding that he had made the workplace hostile or intimidating for her and had committed workplace harassment against her.

72.

73. In submissions in which it was sought to establish the Applicant's guilt of workplace harassment, the ASG/OHRM had stated to the JDC that "[w]hile they had both agreed to keep their relationship after hours and out

The second issue is whether the Applicant's conduct in discussing the Complainant amounts to abuse of his authority under the relevant Rules.

83. As to the matter of "attempt", this is an offence known only within national jurisdictions in the province of criminal liability. The law of attempts deals with inchoate or incomplete criminal offences. Neither in national civil jurisdictions, International Administrative law nor in the United Nations Staff Rules, Regulations or any manner of issuances does a law of attempts exist.

84. There is however one exception. Following the report of the OIOS and a similar report by an Inter-Agency Standing Committee on the issue of sexual exploitation and abuse of refugees by aid workers both issued in 2002, the General Assembly made a Resolution (57/306) at its 83rd plenary meeting requesting the Secretary-General to, in addition to other measures, issue a bulletin on the subject; ST/SGB/2003/13 (Special measures for protection from sexual exploitation and sexual abuse) was issued.

85. Section 1 of ST/SGB/2003/13 defines sexual exploitation as "any actual or attempted abuse of a position of vulnerabili

attempted abuse of authority will necessarily need to define how far a perpetrator would have proceeded in his preparatory acts before an attempt would be deemed to have taken place. Most importantly, the bulletin did not create the misconduct of attempt within the class of prohibited conduct.

88. It is a trite and basic legal principle that no one can be charged with, tried or indeed punished for an offence unknown to law. Within the United Nations Organization, no staff member can be charged with, adjudged to have contravened and or punished for an offence or misconduct unknown to its Rules, Regulations or other issuances. It is both unprofessional and reckless for ONUB and OHRM to recommend and level a charge of attempted abuse of authority against the Applicant as this does not exist anywhere within the Organization's legal and internal justice systems.

Abuse of authority in approaching the Complainant's new supervisor?

89. In paragraph 30 (ii) of the 18 July 2006 memorandum by OHRM, the Applicant was charged with "attempted abuse of your authority and retaliatory conduct." The particulars of this charge are then stated as follows:

You approached the Complainant's new supervisor for the purpose of engaging in a discussion about the Complainant's personal life and reputation. Further you made persistent attempts to have input into the Complainant's performance appraisal reports, even after you were told by the Chief Civilian Personnel Officer that this would be inappropriate. In doing these things, you sought to damage the Complainant's professional reputation as a consequence of her having made a complaint of sexual and general workplace harassment against you.

90. The inapplicability of the law of attempts as misconduct has been discussed above in relation to United Nations Rules, Regulations and administrative issuances. The definition of abuse of authority under section 1.4 of ST/SGB/2008/5 has also been reproduced above. It must be borne in mind however that this bulletin was not in existence at the times material to this Application and therefore the said conduct was not defined by the Organization before 2008. The 1966 definition of abuse of authority in the workplace based on the policy of the federal Department of Justice of Canada is reproduced hereunder as an additional aid to the examination of the charge of abuse of authority levelled against the Applicant.

Abuse of authority means improperly taking advantage of a position of authority

threaten an employee's livelihood or interfere with or influence his or her career. It may include behaviour such as yelling, belittling an employee's work, reprimanding an employee in front of other staff members, arbitrarily withholding or delaying leave approval, favouritism, unjustifiably withholding information that the employee needs to perform his or her work, demanding overtime without reason, justification or prior notice and asking subordinates to take on personal errands.

91. In examining the charge of abuse of authority brought against the Applicant, the first hurdle to cross in this inquiry is to determine whether at the time that the Applicant is said to have approached the Complainant's new supervisor, he was a person in authority with regards to the Complainant? The clear answer is

An abuse of authority is constituted by the improper use of power or authority inherent in a position to endanger or undermine the position of another, and may include actions which interfere with or otherwise influence the performance or advancement of any person. In short, it is an improper exercise by a person of his or her responsibilities.

95. Even going by this definition, it is difficult to see where the Applicant in approaching the Complainant's new manager to talk about her is exercising any responsibility of his properly or improperly. The point is that at the material time, he had no responsibility to exercise regarding the Complainant! There is simply neither power nor authority that a former manager can exercise to endanger or undermine the position of a former supervisee

offer what he considered to be an accurate portrayal, the resulting damage would have been the same. (Emphasis added).

103. The JDC further concluded that: “in taking a suspect and potentially damaging course of action, the staff member abused his position as the Complainant’s former supervisor in retaliation for the lodging of the complaint.”

104. It is the Organization’s rule on performance appraisals that managers must formally appraise staff under their charge during the course of a reporting period. At least, *prima facie*, the Applicant was right to request that he make the necessary input as this is a requirement of the Rules on staff appraisals. These performance appraisals are not written in stone and there is provision for the officer reported upon to agree or disagree with his or her manager’s appraisal and may in fact rebut it. There is a fairly elaborate mechanism for such rebuttals. The Complainant’s right to employ the rebuttal mechanism if she thought her appraisal by her former supervisor against whom she had brought a complaint of harassment was incorrect, was definitely not in question.

105. While this Tribunal is not concerned with how the Complainant was eventually appraised during the period that she worked under the Applicant, the question that arises is: what is this “**suspect and potentially damaging course of action**” that constituted abuse of authority and retaliation here? Also how did an official request by the Applicant to do what he ought to do under normal circumstances, and which request had been refused, constitute retaliatory action?

106. These questions are relevant to determine when a “request” even if it appeared to carry a “*vindictive animus*” or bad faith without more, transforms into the prohibited conduct of

that in sexual harassment cases, confidentiality attaches to all communications for the benefit of the Complainant and the alleged harasser and cannot be waived unilaterally by one party. Further, that it is reasonable to expect that a senior staff member such as the Applicant would handle the situation with appropriate discretion in order to preserve the integrity of the investigative process by not discussing the case.

112. In its consideration of this charge, the JDC found that the assumption underlying the Respondent's arguments is that staff members do not need to be given any notice of confidentiality or advice to avoid discussing such cases and should know that such discussion is prohibited. In this instance, the Applicant was said to have failed to observe the prohibition and that this amounted to a form of interference with an investigation. The JDC found that there was no evidence showing an actual interference and that this charge had not been established.

113. In support of the charge, the ASG/OHRM relied on the provisions of former staff rule 101.2(e) which states:

Staff members shall not disrupt or otherwise interfere with any meeting or other official activity of the Organization, nor shall staff members threaten, intimidate or otherwise engage in any conduct intended, directly or indirectly, to interfere with the ability of other staff members to discharge their official duties.

114. It is not disputed that there was no official investigation of the complaint at the time that the Applicant divulged to his colleagues,

actions of staff members. It betrays the confusion of an accuser who is merely on a fishing expedition. Is it a case of interference or an attempt to interfere? It is unnecessary to restate that there is no general law of attempts in the United Nations staff rules and regulations.

116. Again, in light of the reliance placed by the Administration on staff rule 101.2(e) reproduced above, it is pertinent to determine how an investigation which had not even been ordered at the time became an official activity that was interfered with by the Applicant. Also, how did a breach of confidentiality on the part of the Applicant come about because he told others that a complaint was made against him? What confidentiality? Whose confidentiality? In other words which staff rules or regulations or issuances require such confidentiality? Which rules prescribe that a staff member against whom a complaint is made must not “discredit” the Complainant?

117. The charge of interfering with official investigations against the Applicant is totally irrelevant and without any basis and ought never to have been brought by the Respondent as there is no evidence that even remotely points in such a direction. Moreover, such a finding was never made by the investigators. Let it be restated that when officers of OHRM are required to draft charges against staff members who have been investigated for misconduct, they must bear in mind that such duties are to be discharged with a high sense of responsibility, fairness and accountability. It is not in their liberty to run amok with useless charges in the hope dTJ-25Tw[(o1y tIn)5.3u o5h tIn s 1.6()5[(The cquired)-4.9()5.3(staff)-5.3o1y tIn gi

from having any further contact with her. The date on which this information was given to the Applicant was not stated.

120. The Applicant was said to have emailed the Complainant on 5 July 2005 and called her four days later on 9 July to tell her that he had received several messages from her home telephone number in Bosnia. She thereafter reported to the Chief of CDU that her husband told her he had spoken to the Applicant who related offensive and insulting stories about her. The Chief of CDU then verbally instructed the Applicant not to contact the Complainant or her family. The same instruction was verbally given by the ONUB CAO in the presence of the Applicant's supervisor, the Chief of ISS.

121. In the OIOS conversation record of 16 September 2005 with the Chief of CDU, she told investigators that the Complainant phoned her on the morning of a Saturday, which could have been 7 July 2005, crying and telling her that her husband had spoken with the Applicant and was distressed by their conversation. The Chief of CDU thereafter contacted an OHRM officer in the Administrative Law Unit (ALU) in New York to seek advice. The officer advised her that the Applicant must avoid all contact with the Complainant.

122. The said conversation record showed that upon being advised by the ALU officer, the Chief of CDU phoned the CAO asking that he urge the Applicant not to contact the Complainant at all costs. The CAO then spoke to the Applicant in the presence of his supervisor, the CISS about the issue on 11 July which was the same day the Chief of CDU also spoke to the Applicant advising him that the matter was serious and that he must refrain from TD-0.in

then told him it was not a good idea to contact her. Thereafter her husband called the Applicant and left messages on his phone and he called back after seeing the messages and had a talk with the Complainant's husband. It was after he had spoken with the

any of the parties would without doubt have made the party in breach liable on a charge like this. This was not the case here.

131. The CDU has the role of providing technical advice to a field mission and advising the mission leadership on United Nations rules and procedures for the handling of cases of misconduct of all categories. It is therefore up to the team or office to identify the procedures to be adopted in handling the different types of cases and present same to the mission leadership to endorse. It is not to be expected that the CDU will issue instructions to a party to a complaint as it likes or merely as a way of protecting the interests of one of the parties who complains to it as it did in this case. It must be borne in mind that even in the face of a pending harassment complaint between the Applicant and Complainant; both parties needed protection from having their families and other colleagues escalating things by engaging in discussions on the complaint.

132. This Tribunal is of the view that the initial advice by the Chief of CDU to the Applicant not to contact the Complainant was not an official instruction as contemplated by the provisions of staff rule 101.2 (b) and that the CDU had no authority to issue such an official instruction to the Applicant. In the absence of a clearly laid down procedure endorsed by the mission leadership to deal with such situations, it is evident that the CDU as an office did not have any authority to instruct a staff member not to contact another staff member because of a pending complaint of misconduct. When instructed by his supervisors, the Applicant complied. The Tribunal disagrees totally with the conclusions reached by both the JDC and the OIOS investigators that the Applicant was liable on this charge.

Informal approach to dealing with incidents of sexual harassment

133. The Organization's procedures for dealing with reports of sexual harassment are governed by ST/AI/379 of 1992. The Administrative Instruction sets out both formal and informal approaches in this regard. Section 6 and part of section 8 of the document provide that:

S.6 The aggrieved individual may also seek advice and help from his or her Personnel Officer, or from a senior member of the department or office, who is in a position to discuss the matter discreetly with the individual and with the alleged harasser with a view to achieving an informal resolution of the problem, where appropriate.

with the Chief of CDU about her perceived harassment by the Applicant for the first time on 21 May 2005. There is evidence however in the emails before the Tribunal that the Applicant tried to contact her and appeal to her that they resolve the matter as friends and as they had done on many past occasions even after she had submitted a written report to the Chief of CDU.

139. At paragraph 91 of the Applicant's written submissions to the JDC dated 6 February 2007, he refers to the desire of the Complainant for an informal resolution stated to her housemate on 18 May 2005 and quotes it as follows: "I would like to solve this problem without any scandal/broadcasting through the ONUB, more correct I would be happy if things are taken care off (sic) on low profile ground. I do not wont (sic) to upset anybody... all I wont (sic) is to protect myself." The Applicant also refers to a conversation with the

Case No. UNDT/NBI/2010/012/UNAT/1589

Judgment No. UNDT/2011/106

allegations to the Chief of CDU took place on that occasion in the presence of the two anonymous complainants. Evidently from that point on, the Chief of CDU embarked on the formal procedure by asking the Complainant to

Case No. UNDT/NBI/2010/012/UNAT/1589

Judgment No. UNDT/2011/106

disciplinary sanction on the basis of evidence that was improperly obtained in breach of an Applicant's due process rights.

159. Also in the former United Nations Administrative Tribunal Judgment No. 815 *Calin* (1997) case, the former United Nations Administrative Tribunal rightly held that procedural propriety and the protection of fundamental rights is a central theme pervading not only the Charter of the United Nations, but various issuances of the Secretary-General and the General Assembly. It further held that disciplinary findings and penalties imposed as a result or as a consequence of a breach of this fundamental principle cannot be regarded as fair. A breach of the right to due process is both procedurally and substantively unfair.

160. Whatever the Rules or Administrative Instructions relied upon here, there is no justification for withholding the written communication from the applicant. The fact that the communication was withheld from the applicant is both procedurally and substantively unfair.

as to the allegations and, ultimately the findings or recommendations affecting him or her. Such a standard was not met in this case.

163. Was the intervention of the Organization in this case an invasion of privacy as claimed by the Applicant especially as such intervention also involved the wide circulation of personal and intimate emails he had sent to the Complainant? There is no doubt that the relationship between the Applicant and the Complainant started out as a private friendship when they first met in UNIMBH. The said friendship continued when the Complainant also with the assistance of the Applicant went to work with him at ONUB. ST/SGB/2002/13 at paragraph 38 deals with personal conduct as follows:

The private life of international civil servants is their own concern and organizations should not intrude upon it. There can be situations, however, in which the behaviour of an international civil servant can reflect on the organization. International civil servants must therefore bear in mind that their conduct and activities outside the workplace, even if unrelated to official duties, can compromise the image and the interests of the organization

164. Although the Applicant and the Complainant enjoyed a private friendship which was their own concern and perhaps the concern too of their respective spouses, the Tribunal finds that the Organization was acting within its proper boundaries in entertaining what appeared at least to be a harassment complaint. To this extent, there was no invasion of privacy on the part of the Organization in this case.

Was there bias or the appearance of it on the part of the ONUB Administration in this case?

165. Part of the Applicant's case is that ONUB Administration had de

- c. Non-investigation of the Applicant's claim that the recruitment of a new female staff member in his unit annoyed the Complainant and motivated her complaint.

166. In response to this, the ASG/OHRM submitted that it was appropriate for ONUB to assist and facilitate the Complainant in submitting her case. This assertion readily raises the question of the proper role of Management or the Administration in disputes between staff members. Why does the Organization get involved in disputes between staff members especially when a complaint is made to it? As a responsible employer, the Organization has a duty to provi

174. Not only did ONUB appear to adopt the complaint, its Management somewhat argued unreasonably that the JDC in assessing the emails of the Complainant “create[d] a standard that would make it inherently impossible to ever establish a case of sexual harassment.” This kind of reasoning failed to appreciate that the purpose of law is the due regulation of human conduct, not the establishing of cases against individuals. The argument itself also favoured a standard whereby the role played by the alleged victim of a sexual harassment case is

Complainant's confidantes tried to convince her to overcome her unwilli

Findings/Conclusions

187. The summary of the Tribunal's findings and conclusions are as follows:

- a. The charge of sexual harassment against the Applicant cannot be sustained in the circumstances. To the extent that she was willing and happy to engage in sex talk

as this does not exist anywhere within the Organization's legal and internal justice systems. The only relevant misconduct in this regard is abuse of authority not an attempted abuse of authority.

g. Under no system of law does the prohibition of abuse of authority in the workplace anticipate or intend that a person who is not in authority over another in the workplace can abuse an authority which he or she does not possess.

h. There is simply neither power nor authority that a former manager can exercise to endanger or undermine the position of a former supervisee except where the said manager is in a position to make an evaluation of work done in the past by the supervisee.

r6.0007 Tc0.6213 Tw09(who)5.r str6. TD0.0007 Tc0.1431 Tw05hority thurce nt f4(niza)8.de

i. It was not established that the Applicant had any kind of influence over the new manager as to cause him to abuse his authority over the Complainant or that she had suffered any form of abuse of authority from any source since her initial

1. The conclusions reached by both the JDC and the OIOS investigators on the

t. It must be further restated that due to the hasty efforts by third parties to prove an SEA offence against the Applicant by using the Complainant to provide the

Case No. UNDT/N

Judgment No. UNI



Judge Nr. [redacted]

Date [redacted]

Entered in the Register on this 23rd day of June 2011



Pelé Eoé, Registrar, UNDT, Nairobi