



Indata

1. On 7 January 2013, the Applicant, a Supervisor in the Publishing Section,

4. Further issues for consideration include the following:
 - a. Did the investigation panel follow proper procedures when reviewing the allegation filed by the Applicant?
 - b. Did the Assistant Secretary-General (“ASG”), Office of Human Resources Management (“OHRM”), act lawfully when she dismissed the complaint of the Applicant that he was the victim of harassment and abuse of authority?
 - c. Is the Applicant entitled to receive a copy of the investigation report?

Fact

5. On 3 and 11 November 2011, the Applicant sent a letter on behalf of the staff of the Publishing Section, DGACM, to Mr. Shaaban, USG, DGACM, requesting an investigation into what he described as mismanagement and abuse of authority by Mr. Nandoe, Chief of the Publishing Section. The Applicant’s letter contained a 35-page annex detailing 48 acts of alleged gross negligence, abuse of authority and professional misconduct which the staff of the Publishing Section were complaining about.
6. On 21 November 2011, Mr. Shaaban established a three-person fact-finding panel. The terms of reference of the panel were given orally to its members on 21 November 2011 and confirmed in writing on 31 January 2012.
7. On 8 December 2011, the Office of Internal Oversight Services informed the Applicant that, after careful consideration, they considered that the matter would be more appropriately addressed by the relevant department in accordance with the terms outlined in ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority).

[Panel member 3] clarified that the document sent by Mr. Smith to Mr. Shaaban had been prepared by different people. The information had been compiled by Mr. Smith, then forwarded. Mr. Smith didn't verify each incident. ...

[Panel member 1] stressed that [the Applicant] was the representative, not the complainant, and that the complainants would have to provide the Panel with the facts relevant to their complaints. ...

...

[Panel member 3] asked Mr. Smith whether he understood the mandate of this panel and advised that the investigation would be conducted in accordance with the SGB. There were some things that the panel could focus on, but other things fell outside its mandate or jurisdiction. [The Applicant] said he understood.

9. On 9 January 2012, the Applicant provided the fact-finding panel with an amended version to the annex appended to the complaint addressed to Mr. Shaaban, identifying the individual staff members affected by each of the specific incidents. The Applicant's name appeared against seven out of 38 of the alleged violations being complained of, namely those identified by paras. 6, 7, 29, 31, 34, 35 and 38.

10. On 18 June 2012, the panel completed its fact-finding report.

11. On 9 July 2012, Mr. Shaaban released the summary of findings of the report of the investigation panel to Ms. Catherine Pollard, Assistant Secretary-General for Human Resources Management, with a copy to the Applicant, Mr. Nandoe and Ms. Beswick. The summary stated that:

3. ... [T]he Panel did not investigate allegations provided in the complaint relating to the diversion of funds expended for outsourced services to non United Nations entities, as referred in the submitted complaint.

4. ... [E]vidence indicated that Mr. Nandoe's behavior may not always have comported with the Organization's best practices relative to the core values and managerial competencies.

5. ... [A]fter careful examination of the complaint, the Panel ruled that twenty-eight counts of alleged harassment and abuse of authority out of a total of thirty eight were judgmental claims in

nature for which the factual basis could not be established, and decided to limit its investigation to the other ten counts.

12. Accordingly, the Panel decided to limit its investigation to allegations described in paragraphs 8, 9, 11, 13, 16, 17, 23, 24, 25 and 28 of the annex to the complaint sent to the USG, DGACM. In summary, the panel stated in paragraph 4 of the report that:

The evidence presented to the Panel did not support the allegations of harassment, abuse of authority or other prohibited conduct as defined in ST/SGB/2008/5.

13. On 16 July 2012, the Applicant requested a copy of the panel's report. On 18 July 2012, the Applicant was informed that ST/SGB/2008/5 did not contain any provisions for the complainant to be provided with a copy of the report.

14.

17. On 13 February 2013, by Order No. 42 (NY/2013), the Tribunal requested the Applicant to provide a concise statement identifying the facts in support of his contention that he had personally been subjected to treatment that was in non-compliance with the terms of his appointment. The Applicant was also ordered to identify which of the alleged incidents that affected him personally had been submitted to the MEU. Finally, the Applicant was asked to respond to the Secretary-General's contention that his application was not receivable. The Applicant responded to the Tribunal's Order on 22 February 2013.

Cnsidentn

18. Before considering the substantive merits of the claim the Tribunal is required to determine whether the claim is receivable.

Time limits

19. The Respondent submits that the Applicant's request for management evaluation of the findings of the fact-finding panel was submitted out of time and that the present appeal is therefore not receivable.

20. Staff rule 11.2(c) states that a "request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested".

21. The Applicant stated in his application that he was contesting the decision that was notified to him on 9 July 2012. A further review of the evidence provided to the Tribunal indicates that on that date the Applicant was carbon copied on the report of the fact-finding panel that was sent by Mr. Shaaban to Ms. Pollard. The introductory paragraph of the report starts off by stating that it is addressing a complaint that "was filled on 11 November 2011 on behalf of the staff of

Reporting-MTA: dns; node002-ptc.un.org
Received-From-MTA: DNS; NYSV0251.ptc.un.org
Arrival-Date: Fri, 7 Sep 2012 17:21:14 -0400
Final-Recipient: RFC822; meu@un.org
Action: failed
Status: 5.3.4
Diagnostic-Code: SMTP; 552 Message size exceeds fixed maximum
message size set by administrator
Last-Attempt-Date: Fri, 7 Sep 2012 17:21:16 -0400

24. The Tribunal notes the absence of any explanation as to why such a refiling “in batches” could not have taken place on 7 September 2012 and why the fact of non-service of the request went unnoticed until mid-day on Monday, 10 September 2012. The question therefore arises as to the reason resulting in

30. The fact that the Applicant was able to submit the request on the following Monday shows that it could have been similarly effected on Friday, 7 September 2012, as there was sufficient time to do so. Accordingly, the Tribunal finds that despite the technical problems that were encountered, it was still feasible to make a timely request for management evaluation.

31. The Tribunal finds that the activating cause of the request for management evaluation being filed out of time was failure on the part of the Applicant's legal representative and not due to any failure by the MEU.

32. The Tribunal finds that the claim is not receivable. In the circumstances, it is not necessary to consider the remaining issues identified at paras. 3 and 4 above.

Costs

33. Had due diligence been applied on the part of Mr. Smith's legal representative, his claim would have been in compliance with the mandatory requirement regarding the filing of his request for management evaluation under the rules. As a consequence of this failure, the parties themselves, and the Tribunal,

36. The Tribunal's Statute and Rules of Procedure do not make provision for the imposition of a sanction against either party for conduct that does not amount to manifest abuse albeit it may be frivolous, vexatious, negligent, unreasonable or otherwise misconceived. Until such time as the General Assembly considers it appropriate to amend the Statute and the Rules of Procedure of the Tribunals to deal with such conduct, the loss of a right to a judicial determination of the merits of one's case is the only salutary lesson to parties to observe the requirements under the Staff Rules, the Statute and the Rules of Procedure of the Tribunals, and, regrettably, unnecessary costs will continue to be incurred.

37. The Application is not receivable. No order for costs will be made.

Conclun

38. The application is dismissed.

(Signed)

Judge Goolam Meeran

Dated this 17th day of December 2013

Entered in the Register on this 17th day of December 2013

(Signed)

Hafida Lahiouel, Registrar, New York