

Introduction

1. The Applicant, an Investigator at the P-4 level, step XIII, with the Office of Internal Oversight Services, contests the dismissal by the Under-Secretary-General for Management of two complaints that the Applicant had submitted against the Officer-in-Charge of the Management Evaluation Unit OIC/ pursuant to ST/SGB/2008/5 (Prohibition of Discrimination,

(b) The second request concerned the complaint submitted pursuant to administrative instruction ST/AI/371 The Mana 684-302(c)27(1 0 0 1 391)4(omp)

5. On 22 March 2016, the Registry acknowledged receipt of the application and instructed the Respondent to submit his reply by 21 April 2016. The parties were further informed that the application had been sent for translation into English and that they would be notified when the English version of the application would be available.

6. On 28 March 2016, the Registry informed the parties that an English translation of the application was now available through the eFiling portal.

7. On 21 April 2016, the Respondent filed his reply.

8. On 14 July 2016, the present case was assigned to the undersigned Judge, of

9. By Order No. 185 (NY/2016) dated 28 July 2016, the Tribunal instructed the Applicant to file his comments, if any, to the submissions included in the Respond

30. A staff member has no right to compel the Administration to conduct an investigation unless such right is granted by the Regulations and Rules. In such cases, it would be covered by the terms of appointment and entitle the staff member to pursue his or her claim even before the UNDT, and, after review, the Tribunal could order to conduct an investigation or to take disciplinary measures.

31. Article 2(1)(a) of the UNDT Statute covers the pertinent Regulations, Rules, Bulletins, and Administrative Instructions issued by the Secretary-General. Among those is ST/SGB/2008/5 concerning the prohibition of discrimination, harassment, including sexual harassment, and abuse of authority. Paragraph 2.1 of ST/SGB/2008/5

dignity and respect and to work in an environment free from

32.

37. The judicial review of the administrative decision may result in the affirmation of the contested decision or its rescission, and in the latter case, Article 10 of the UNDT Statute allows to order both the rescission and the performance needed to bring the administrative situation in compliance with the law.

Applicable law

20. Article 2.1(a) of the Dispute Tribunal Statute defines the nature of the administrative decisions that may be appealed to the Tribunal:

1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of

include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged noncompliance.

21. As regards the requirement for an applicant to request management evaluation of (some) administrative decisions before submitting an application to the Dispute Tribunal, staff rule 11.2 provides, as relevant to the present case, that (emphasis added):

(a) *A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.*

(d) The Secretary-
the management evaluation, *shall be communicated in writing to the staff member.*

22. Concerning cases, like the present one, related to the United Nations Secretariat, pursuant to sec. 3.6 of ST/SGB/2010/9 (Organization of the Department

(g) Assisting the Under-Secretary-General for Management

compliance with their responsibilities in the internal justice system.

23. ST/SGB/2008/5 defines different types of prohibited conduct which would warrant the USG/DM to take action as follows:

1.1 Discrimination is any unfair treatment or arbitrary distinction in, sexual orientation, disability, age, language, social origin or other status. Discrimination may be an isolated event affecting one person or a group of persons similarly situated, or may manifest itself through harassment or abuse of authority.

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 the provisions of this policy but in the context of performance management.

1.3 Sexual harassment is any unwelcome sexual advance, request

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Judgment

fulfilled this duty and that the MEU, presumably, failed to determine the legality of

26. The Tribunal notes that it is apparent from the facts that the MEU only became

that the Director of the Office of the USG/DM informed the Applicant that the