

UNITED NATIONS DISPUTE TRIBUNAL

Introduction

1. The Applicant, a staff member serving as a Senior Administrative Officer at the P-5 level, step 8, in the Department of Field Support (“DFS”) in New York, filed an application contesting “the decision to place a letter of reprimand on [her] official status file following a disciplinary investigation” that was conducted while she was working for the United Nations Assistance Mission in Iraq (“UNAMI”) from February 2013 to February 2015 as Chief of Mission Support (“CMS”). The Applicant’s requested relief is “that the decision dated 17 January 2017 to impose a written reprimand be rescinded”.

2. The Respondent contends that the application should be dismissed in its entirety, and that the issue of remedies does not arise since the Applicant does not seek compensation.

Factual background

3. The facts, as agreed by the parties in their joint submission dated

“I certify that video conference and audio-conference, online meetings and other remote practices have been carefully reviewed and found not to be effective for the objective of this travel”.

... On 19 January 2014, [Mr. MR] signed the MOP form submitted by [Mr. EA] and then sent it to the Applicant for final approval. The Applicant reviewed the request and highlighted concerns that she had regarding the reasons provided for [Mr. EA’s] visit.

... On 20 January 2014, [Mr. MR] withdrew his signature from the MOP that had initially been granted to [Mr. EA] after the Applicant had asked him to clarify further about [Mr. EA’s] travel. [Mr. MR] stated that, after he had initially “signed the security clearance for the MOP”, the Applicant indicated to him that she did not fully understand “the objective of such a long two week ‘pre-audit’ and suggested that [he] assist her in obtaining the clarity by putting [UNAMI] on hold by withdrawing the initial security clearance”. [Mr. MR] went on to state that “in an effort to obtain clarity, I withdrew security clearance”.

4. Further, as results from the Respondent’s reply, the subsequent events occurred as follows:

... After having exchanged a series of emails with [Mr. MR] on 20 January 2014, [Mr. EA] told [Ms. EB] that the Applicant was “behind all the drama” and [Ms. EB] telephoned the Applicant. During the telephone call, [Ms. EB] explained the audit process for the Applicant to understand the travel request made by [Mr. EA] for his travel to Baghdad. [Ms. EB] stated that the Applicant had a different understanding of audit fieldwork, and that the Applicant was “maybe of the view that [the Applicant was] a decision-maker in the approach [OIOS] should take in audit”. According to the Applicant, during the phone call, she told [Ms. EB] that [Mr. EA] did not follow “the audit steps mentioned in the notification letter”, and that “the notification letter would need to be amended to prevent future issues of this nature”.

... After the telephone call, [Ms. EB] advised [Mr. EA] to file a new MOP clarifying that the audit in question could not be achieved via videoconference. The only clarification added in [Mr. EA]’s second MOP was that the audit could not be conducted via videoconference, which [Mr. EA] claimed, in and of itself, was evident in the first MOP submitted since ‘the portion that the Chief of Section signs already ha[d] a certification to say that it ha[d] been

that it was alleged that the Applicant had harassed, and/or abused her authority towards Mr. EA, with no reasonable justification or factual basis:

- a) On 21 January 2014, by making derogatory comments about [Mr. EA] and his purpose of travel to Baghdad in a meeting of senior staff members of UNAMI.
- b) On or around 20 January 2014, by taking actions to ensure the [MOP]

reprimand is an administrative measure and that it would be placed in her official status file. She also required the Applicant to undertake an on-site training course with a focus on communication and problem-solving skills.

20. On 20 March 2017, the Applicant filed her application with the Dispute Tribunal.

21. On 20 March 2017, in accordance with art. 8.4 of the Dispute Tribunal's

of the case. The Respondent's Counsel indicated that informal resolution was unlikely given the Applicant's request was for the rescission of the reprimand. The Respondent's Counsel further indicated that since the contested decision did not involve a disciplinary measure, the settlement authority was with the Department of Management ("DM").

28. The Tribunal recommended both parties to enter into discussions for an informal resolution of the case and invited the Respondent's Counsel to inform his client, namely the Secretary-General, of the Tribunal's recommendation and to file a submission in writing by 20 June 2017, advising the Tribunal if he would consent to enter into discussions for an informal resolution of the present case either through the Office of the United Nations Ombudsman and Mediation Services ("Office of the Ombudsman") or through *inter partes* discussions.

29. The parties informed the Tribunal that no further written evidence was to be requested. The Applicant's Counsel requested a hearing to adduce oral evidence relating to the contested factual background and the Respondent's Counsel indicated that they would also request to call witnesses. The Tribunal instructed the parties that, should the parties not agree to enter into discussions for an informal resolution and to suspend the proceedings in the present case, they should file a joint submission, identifying the legal issues and the agreed and contested facts, and provide a list of proposed witnesses together with an explanation as to the relevance of each witness testimony together with agreed dates for a hearing.

30. On 6 June 2017, by Order No. 106 (NY/2017), the Tribunal instructed the parties to file a joint submission by 20 June 2017 informing the Tribunal on whether a) they would be amenable to enter into discussions for an informal resolution of the case either through the Office of the Ombudsman or *inter partes* discussions, and if so, the parties were to file a jointly-signed request for a suspension of the proceedings indicating the period; and b) in case the parties were not amenable to informal resolution, the

MOP request. Further, why Mr. MR withdrew his approval does not address the key issue in the case, namely, the Applicant's communication skills. It is, therefore, not relevant who had, in fact, cancelled the MOP. The Applicant's contention that she undertook the actions in line with her official duties and responsibilities to control travel expenses, does not address the issue, namely, the Applicant's failure to address her concerns in a constructive and open manner. The Applicant chose not to engage in a further discussion with Mr. EA or with OIOS about her suspicion and chose to contact Mr. MR and spread her suspicion. Although no evidence in the record shows a reasonable justification or factual basis for her suspicion about Mr. EA's motive, the Administration did not reprimand the Applicant for having suspicions or ive, the

viewed in the context of her role as “carrying out due diligence”, the record shows no information as to what due diligence had been carried out by the Applicant.

e. In light of the foregoing, the facts underpinning the written reprimand had been established by reliable evidence.

f. The Applicant’s procedural fairness rights were respected.

g. ST/AI/371 (Revised disciplinary measures and procedures), as amended, authorizes the ASG/OHRM to decide to close a disciplinary case, and impose one or more of the non-disciplinary measures indicated in staff rule 10.2(b)(i) and (ii), where appropriate.

h. In accordance with staff rule 10.2(c), prior to the issuance of the written reprimand, a staff member should be provided with the opportunity to comment on the facts and circumstances. By the memorandum dated 28 September 2016, the Applicant was provided with the opportunity to comment on the facts and circumstances of this case.

i.

(b) To appeal an administrative decision imposing a disciplinary measure;

(c) To enforce the implementation of an agreement reached through mediation pursuant to article 8, paragraph 2, of the present statute.

...

Article 8

1. An application shall be receivable if:

(b) 90 calendar days of the relevant deadline for the communication of a response to a management evaluation, namely, 30 calendar days for disputes arising at Headquarters and 45 calendar days for disputes arising at other offices; or

(c) 90 calendar days of the receipt by the applicant of the administrative decision in cases where a management evaluation of the contested decision is not required.

...

Article 35

Subject to article 8.3 of the statute of the Dispute Tribunal, the President, or the judge or panel hearing a case, may shorten or extend a time limit fixed by the rules of procedure or waive any rule when the interests of justice so require.

44. Staff rule 6.70 (in its original form) that: to article

(a) Failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant may amount

challenging the imposition of such measures directly to the United Nations Dispute Tribunal, in accordance with chapter XI of the Staff Rules.

(d) An appeal against a judgement of the United Nations Dispute Tribunal by the staff member or by the Secretary-General may be filed with the United Nations Appeals Tribunal in accordance with chapter XI of the Staff Rules.

47. Sections 9 and 10 of ST/AI/371, as revised by ST/AI/371/Amend.1, provide as follows:

9. Upon consideration of the entire dossier, the Assistant Secretary-General, Office of Human Resources Management, on behalf of the Secretary-General shall proceed as follows:

(a) Decide that the disciplinary case should be closed, and immediately inform the staff member that the charges have been dropped and that no disciplinary action will be taken. The Assistant Secretary-General may, however, decide to impose one or more of the non-disciplinary measures indicated in staff rule 10.2(b)(i) and (ii), where appropriate; or

(b) Should the preponderance of the evidence indicate that misconduct has occurred, recommend the imposition of one or more disciplinary measures.

Decisions on recommendations for the imposition of disciplinary measures shall be taken by the Under-Secretary-General for Management on behalf of the Secretary-General. The Office of Legal Affairs shall review recommendations for dismissal of staff under staff rule 10.2(a)(ix). Staff members shall be notified of a decision to impose a disciplinary measure by the Assistant Secretary-General for Human Resources Management.

10. A staff member against whom a disciplinary or a non-disciplinary measure has been imposed following the conclusion of the disciplinary process is not required to request a management evaluation, and may submit an application to the United Nations Dispute Tribunal in accordance with chapter XI of the Staff Rules. The submission of an application to the United Nations Dispute Tribunal contesting a disciplinary or non-disciplinary measure imposed following the conclusion of the disciplinary process shall be made within 90 calendar days of receiving notification of the decision. The filing of such an application shall not have the effect of suspending the measure.

48. Staff regulation 1.2 on basic rights and obligations of staff provides as follows:

a) Staff members shall uphold and respect the principles set out in the Charter, including faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women. Consequently, staff members shall exhibit respect for all cultures; they shall not discriminate against any individual or group of individuals or otherwise abuse the power and authority vested in them;

b) Staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status.

...

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

49. Sections 1.2, 1.4, 1.5, 2.1-2.4, 3.1-3.3, 5.3, 5.14-5.18, 5.20 and 6.5 of ST/SGB/2008/5 provide in the relevant parts as follows (footnotes omitted):

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 words*

work environment which includes, but is not limited to, the use of intimidation, threats, blackmail or coercion. Discrimination and harassment, including sexual harassment, are particularly serious when accompanied by abuse of authority.

1.5 For the purposes of the present bulletin, discrimination, harassment, including sexual harassment, and abuse of authority shall collectively be referred to as “prohibited conduct”.

2.1 In accordance with the provisions of Article 101, paragraph 3, of the Charter of the United Nations, and the core values set out in staff regulation 1.2(a) and staff rules 101.2(d), 201.2(d) and 301.3(d), every staff member has the right to be treated with dignity and respect, and to work in an environment free from discrimination, harassment and abuse. Consequently, any form of discrimination, harassment, including sexual harassment, and abuse of authority is prohibited.

2.2 The Organization has the duty to take all appropriate measures towards ensuring a harmonious work environment, and to protect its staff from exposure to any form of prohibited conduct, through preventive measures and the provision of effective remedies when prevention has failed.

2.3 In their interactions with others, all staff members are expected to act with tolerance, sensitivity and respect for differences. Any form of prohibited conduct in the workplace or in connection with work is a violation of these principles and may lead to disciplinary action, whether the prohibited conduct takes place in the workplace, in the course of official travel or an official mission, or in other settings in which it may have an impact on the workplace.

2.4 The present bulletin shall apply to all staff of the Secretariat. Complaints of prohibited conduct may be made by any staff member, consultant, contractor, gratis personnel, including interns, and any other person who may have been subject to prohibited conduct on the part of a staff member in a work-related situation.

3.1 All staff members have the obligation to ensure that they do not engage in or condone behaviour which would constitute prohibited conduct with respect to their peers, supervisors, supervisees and other persons performing duties for the United Nations.

3.2 Managers and supervisors have the duty to take all appropriate measures to promote a harmonious work environment, free of intimidation, hostility, offence and any form of prohibited conduct. They must act as role models by upholding the highest standards of conduct. Managers and supervisors have the obligation to ensure that complaints of prohibited conduct are promptly addressed in a fair and impartial manner. Failure on the part of managers and supervisors to

51. E-Guide to the United Nations Departments of Peacekeeping Operations and Field Support (“e-Guide to UN DPKO and DFS”) – A Resource for New Staff at Headquarters – 2008 provides as follows:

Mission Chiefs

...

The ... Chief of Mission Support (CMS) is the most senior [United Nations] official within the mission that is authorized to expend [United Nations] funds associated with the mission’s allocated budget. Therefore, this is a critical function in all peacekeeping missions. The CMS may also be supported by two civilian subordinate officials: a Chief Administrative Services (CAS) and a Chief Integrated Support Services (CISS).

Functions and activities - Civilian Mission Support:

Administrative services;

Procurement;

...

Communications;

Logistical support to all components;

Receivability

52. In the application filed on 20 March 2017, the Applicant contested the administrative measure of reprimand that was notified to her on 17 January 2017. The Tribunal notes that the present application was filed on 20 March 2017, within 90 days from the date of notification of the measure, and that the contested decision is not subject to a management evaluation. The Tribunal concludes that the application meets all the receivability requirements of art. 8 of the Dispute Tribunal’s Statute and of staff rule 11.2(b).

On the merits

The imposition of the administrative (non-disciplinary) measure of a written reprimand

53. The Tribunal notes that staff rules 10.1, 10.2(b)(i) and (c), and 10.3 state as follows:

Staff rule 10.1

- a) Failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant may amount to misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct.
- b) Where the staff member's failure to comply with his or her obligations or to observe the standards of conduct expected of an international civil servant is determined by the Secretary-General to constitute misconduct, such staff member may be required to reimburse the United Nations either partially or in full for any financial loss suffered by the United Nations as a result of his or her actions, if such actions are determined to be willful, reckless or grossly negligent.
- c) The decision to launch an investigation into allegations of misconduct, to institute a disciplinary process and to impose a disciplinary measure shall be within the discretionary authority of the Secretary-General or officials with delegated authority.

Staff rule 10.2(b)(i) and (c)

- b) Measures other than those listed under staff rule 10.2(a) shall not be considered to be disciplinary measures within the meaning of the present rule. These include, but are not limited to, the following administrative measures:
 - i) Written or oral reprimand;
 - ...
- c) A staff member shall be provided with the opportunity to comment on the facts and circumstances prior to the issuance of a written or oral reprimand pursuant to subparagraph (b)(i) above.

Staff rule 10.3

- a) The Secretary-General may initiate the disciplinary process where the findings of an investigation indicate that misconduct may have occurred. No disciplinary measure may be imposed on a staff member following the completion of an investigation unless he or she has been notified, in writing, of the formal allegations of misconduct against him or her and has been given the opportunity to respond to those formal allegations. The staff member shall also be informed of the right to seek the assistance of counsel in his or her defence through the Office of Staff Legal Assistance, or from outside counsel at his or her own expense.
- b) Any disciplinary measure imposed on a staff member shall be proportionate to the nature and gravity of his or her misconduct.
- c) A staff member against whom disciplinary or non-disciplinary measures, pursuant to staff rule 10.2, have been imposed following the completion of a disciplinary process may submit an application challenging the imposition of such measures directly to the United Nations Dispute Tribunal, in accordance with chapter XI of the Staff Rules.
- d) An appeal against a judgement of the United Nations Dispute Tribunal by the staff member or by the Secretary-General may be filed with the United Nations Appeals Tribunal in accordance with chapter XI of the Staff Rules.

54. It clearly results that the Secretary-General, as the Chief Administrator, or the official with the delegated authority, has the discretionary authority to launch an investigation into allegations of misconduct, to institute a disciplinary process when the findings of an investigation indicate that misconduct may have occurred, and to impose disciplinary or an administrative (non-disciplinary) measure against a staff member, who failed to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuance, or to observe the standards of conduct expected of an international civil servant.

55. The Tribunal considers that both disciplinary and non-disciplinary measures (including oral and written reprimands) have the scope of either sanctioning or imposing an administrative measure on a staff member for his or her failure to

justify any actions she took, as clearly stated in item a) of the letter of delegation of authority of 10 April 2013, which reads that “any proposed expenditures must accord

Mr. MR then decided in his capacity as CoS, based on his own evaluation of the particular circumstances of the situation, to withdraw his signature from the first MOP on 20 January 2014, which he had previously signed on the same day, in order to obtain further clarifications vis-à-vis the alternative resources available within UNAMI, namely VTC.

66. The Respondent indicated in his reply that, during a telephone call on 20 January 2014, Ms. EB explained the audit process for the Applicant to understand the travel request made by Mr. EA and that, following this conversation, Ms. EB stated that the Applicant had a different understanding of audit fieldwork. The Applicant informed Ms. EB during their conversation that, in her view, Mr. EA did not follow the audit steps mentioned in the notification letter and that the notification letter would need to be amended. After the telephone call, Ms. EB advised Mr. EA to file a new MOP clarifying that the audit in question could not be achieved via video-teleconference. In the second MOP request submitted on 23 January 2014 for the period 28 January-9 February 2014, Mr. EA expressly indicated that the VTC was also not a suitable tool to accomplish the purpose of the pre-audit visit, confirming that his presence in person at UNAMI was necessary prior to the entry conference.

67. The Tribunal is of the view that the Applicant's actions were reasonable and in accordance with her obligation to carefully verify the cost of administrative services, procurement and logistical support, since all the costs were supported by UNAMI, in order to ensure that all the provisions of the OIOS Audit Manual were respected.

68. The first MOP submitted on 19 January 2014 indicated that the video conference and audio conference and other remote business practices have been carefully reviewed by Mr. EA, who considered that they were not effective for the objective of his travel to UNAMI. Based on the

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that the Applicant exceeded her competence and that she acted without a reason with the sole objective to delay the audit visit.

72. Mr. EA testified that, if he was to maintain the initial travel dates, he could have travelled on the next day after the discussions which took place on 20 January, namely on 21 January—the initial day for departure to Baghdad indicated in the first MOP. However, for efficiency purposes, Mr. EA decided to change the dates of his travel and submitted the second MOP with a modified travel schedule on 23 January 2014 which was approved on 26 January 2014.

73. The Tribunal further considers that the Applicant acted within the limit of her responsibility while asking for clarifications from Mr. EA regarding the first MOP request and informing the then CoS, Mr. MR, about her concerns and/or the possibility to use alternative means, like VTC facilities. Even though the first MOP was withdrawn by the then CoS on 20 January 2014, all the aspects were clarified on the same day and Mr. EA, as advised by his supervisor, Ms. EB, submitted the second MOP for approval on 23 January 2014. The travel dates were changed by Mr. EA himself and there was no delay of his travel to UNAMI resulting from the Applic M

- b) The letter of reprimand is to be removed in the Applicant's official status file;

- c) The additional administrative measure for the Applicant to undertake an on-site training course with a focus on communication and problem-solving skills is maintained.

(Signed)

Judge Alessandra Greceanu

Dated this 4th day of September 2018

Entered in the Register on this 4th day of September 2018

(Signed)

Nerea Suero Fontecha, Registrar, N