

CaseNo UNDI/GVA/2021/012

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8 On 20 May 2020 the Applicant and the UNOPS SEM sat for a second online

15 On 10 August 2020 the Applicant provided additional details to the DOS C&DEP for UNGSC

16 By letter dated 28 August 2020 the USG/DOS informed the Applicant that a preliminary assessment of his allegations against the CIOS revealed no information of prohibited conduct under ST/SGB/2019/8. As a result, the Applicant's complaint was closed without opening a formal investigation

17 On 18 September 2020 the UNOPS SEM informed the Applicant that his contract would not be renewed beyond 30 November 2020

18 On 27 October 2020 the Applicant requested management evaluation of the USG/DOS' decision to close his complaint of harassment and abuse of authority without opening an investigation. In his request, the Applicant expressed his concern of being subject to retaliation by the CIOS as a result of a disagreement that arose between them during a recruitment exercise in December 2019

19 On 3 December 2020 the Management Evaluation Unit ("MEU") upheld the decision of the USG/DOS to close the Applicant's complaint

20 On 10 December 2020 the Applicant replied to the MEU highlighting alleged inaccuracies in their decision

21 On 28 February 2021, the Applicant filed an application before this Tribunal contesting the 28 August 2020 decision by the USG/DOS to close his complaint of prohibited conduct against the CIOS under ST/SGB/2019/8

22 Following requests for extension of time, which the Tribunal granted, the Respondent filed his reply on 22 April 2021.

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d From the emails of 22 April 2020 and 11 May 2020 the Respondent submits that CIOS was merely stating to the Applicant that the performance measurement tool (i.e, iNeed) showed that he had a performance problem. Nothing more than that. Thus, the emails are well within what can be considered “normal” insofar as “disagreement on work performance or on other work related issues”. Likewise, the move to put the Applicant on a PIP and to remove him from the CDT constitute normal management of a performance issue;

e Furthermore, the application is relying heavily on the CIOS email dated 28 July 2020 in which CIOS stated that the complaint fell within the scope of ST/SGB/20198 and decided to refer the case to the USG/DOS for a

to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary General ()

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38 The Applicant does not point to any particular words that the CIOS used that could have been considered denigrating or humiliating. What the Applicant

13 Harassment is any unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person, when such conduct interferes with work or creates an intimidating, hostile or offensive work environment.

It includes, but is not limited to, the following forms of work-related verbal or physical conduct which tend to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another: Harassment may be directed at one or more persons based on a shared characteristic or trait as set out in section 1.2 above. Harassment normally implies a series of incidents.

46 It follows that for a staff member's behaviour to be punishable as constituting the disciplinary offence of harassment pursuant to ST/SGB/2019/8, the analysis of said behaviour must pass a twofold test: it must be found "improper and unwelcome" and "might reasonably be expected or be perceived to cause offence or humiliation to another person". Therefore, as recently explained by this Tribunal in UNDI/2022/018, "the test for harassment is the conduct itself and requires objective and subjective examinations as to whether it could be expected or perceived to cause offence or humiliation to a reasonable person" (2018 UNAT-873, para 76).

47 Accordingly, in determining whether a conduct amounts to harassment, the Tribunal will not give undue weight to the subjective perceptions of the alleged misconduct by an individual such as the victim (UNAT 2018/178, para 178). In other words, there is no perception of offence at the discretion of the victim (cf. section 1.2 above).

misconduct or not, the Tribunal will consider the circumstances in which a comment was made, or an action was taken (, para 180).

49 In the Applicant's case, the complaint involved a specific incident, i.e., the "underperformance" emails sent by the CIOS, that later evolved into the Applicant's removal from the CDT and the decision to implement a PIP for him. These two follow-up actions were not taken by the CIOS, against whom the Applicant filed the harassment complaint, but rather by the Applicant's supervisors.

50 Having examined the evidence on record, the Tribunal finds that there were no meaningful indicia of harassment in the emails and follow-up actions that were the object of the Applicant's complaint.

51 The CIOS' emails to the Applicant state nothing more than a performance issue that needed to be addressed, and the follow-up measures taken by the Applicant's supervisors are well within their managerial and supervisory discretion. The fact that the Applicant does not agree with them, or even the fact that the Applicant perceives said decisions as offensive, does not automatically constitute harassment.

52 Similarly, the fact that the CIOS sent the "underperformance" email (2

54 The Applicant relies on the OIOS' email dated 28 July 2020 which stated that "the complaint falls within the application of ST/SGB/2008/5", to support his

contrary, the Applicant was given every opportunity to amend his complaint as well as to provide further details and clarifications

58 Finally, at this juncture, the Tribunal notes that, as highlighted by the Respondent, the case involves the application of legal instruments at different entities (i.e., the UN Secretariat and UNOPS) and that there are no material differences between ST/SGB/2019/8 and UNOPS policies on harassment, abuse of authority and discrimination reflected in sec. 773 (Manage Formal Reporting of Internal Grievances) of the UNOPS Process and Quality Management System (PQMS).

59 The complaint reported to both OIOS and the USG/DOS never addressed any concerns of retaliation. The Applicant was asked at least twice to amend his complaint by providing specific details of the allegations, but he never mentioned a retaliatory motive behind the OIOS dive

