
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2023/024
Judgment No.: UNDT/2024/056
Date: 4 September 2024
Original: English

Before: Judge Margaret Tibulya

Registry: New York

Registrar: Isaac Endeley

HUNT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

George G. Irving

Counsel for Respondent:

Steven Dietrich, DAS/ALD/OHR UN Secretariat
Miryoung An, DAS/ALD/OHR, UN Secretariat

Notice: This Judgment has been corrected in accordance with art. 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

Introduction

1. On 21 July 2023, the Applicant, a former Senior Investment Officer with the Office of Investment Management (“OIM”) of the United Nations Joint Staff Pension Fund (“UNJSPF”), filed an application in which

... **On 24 November 2021**, the Applicant's laptop and [information communication technology] equipment were seized by OIOS/ID.

... **On 28 September 2022**, the Applicant was presented with allegations of misconduct.

... The Applicant responded **on 5 December 2022**.

¶ ...

interested in doing more profiles on us. She apparently has a copy of the ALM [unknown abbreviation] study and our new benchmarks and asset allocation so anything on this issue is fair game. She will work off the record as she did with me. If you wish to speak with her directly her number is [redacted for privacy reasons] and email is [redacted for privacy reasons].”

... Outside activities

... Both the New York Department of State Division of Corporations and ‘Dun & Bradstreet’ list the Applicant as President of [Catskill Mountain Railroad, “CMRR”]. Other open-source documentation on the Applicant’

line, "RE:

17. It was only after this that the Applicant submitted his response of 19 September 2019 to the same parties, who attended the PMC meeting of 27 August 2019 where the Investment Fund investment was discussed. This included those copied in by the former RSG on 26 June.

Whether the Applicant was a whistleblower

18. Regarding allegations that the Applicant disclosed confidential and commercially sensitive information to the media, one of the defences he advances is that he was a whistleblower who is legally protected.

19. Section 4 of ST/SGB/2017/2/Rev.1 (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations) provides that “[n]otwithstanding staff regulation 1.2(i), protection against retaliation will be extended to an individual who reports misconduct to an entity or individual outside of the established internal mechanisms, where the criteria set out in subparagraphs (a), (b) and (c) below are satisfied”:

- a. Such reporting is necessary to avoid:
 - i. A significant threat to public health and safety; or
 - ii. Substantive damage to the Organization’s operations; or
 - iii. Violations of national or international law; and
- b. The use of internal mechanisms is not possible because:
 - i. At the time the report is made, the individual has grounds to believe that he/she will be subjected to retaliation by the person(s) he/she should report to pursuant to the established internal mechanism; or
 - ii. It is likely that evidence relating to the misconduct will be concealed or destroyed if the individual reports to the person(s) he/she should report to pursuant to the established internal mechanisms; or

iii. The individual has previously reported the same information through the established internal mechanisms, and the Organization has failed to inform the individual in writing of the status of the matter within six months of such a report; and

c. The individual does not accept payment or any other benefit from any party for such report.

20. For a claim to sec. 4 protection to succeed, part (c) criteria and at least two criteria, one from each of parts (a) and (b), must be satisfied.

21. The Tribunal notes that the Applicant substantiated the part (b) criteria as follows:

a. Both the former RSG and HB were the objects of the complaint to OIOS in July 2019 and were the subject of a request for protection from retaliation. No investigation was ever initiated and instead, the Applicant and his colleagues were investigated,

b. he privately raised reservations with the former RSG over the decision to appoint the Complainant, absent a competitive selection process, to a proposed P-4 level post to manage infrastructure investments, and in particular to advocate for a large investment in the the Investment Fund favoured by the former RSG,

c. he raised reservations over the way in which the Investment Fund investment had been handled,

d. he wrote to the former RSG and the PMC listing his concerns with the process by which the Investment Fund transaction was approved, and to a lesser extent his concerns about the qualifications of the Complainant to underwrite the transaction, and that

e. he filed for protection from retaliation with the Ethics Office which found a *prima facie* case of retaliation by the former RSG, yet no action was

22. Regarding the part (a) criteria, the Applicant

department or office concerned, or the focal point appointed to receive reports of sexual exploitation and abuse.

28. The Applicant states that the former RSG and HB were the objects of the complaint to OIOS on 18 July 2019 and were the subject of a request for protection from retaliation, but that no investigation was ever initiated and instead, him and his colleagues were investigated.

29. In terms of sec. 3 above, the Applicant could only make a report to OIOS or the Assistant Secretary-General for Human Resources Management, being that he could not report to the heads of department since his complaint was against them. He therefore rightly reported to OIOS.

30. It is of note that the Applicant's request for protection against retaliation relates to the former RSG's, and not OIOS's conduct. And, it is to the OIOS and not the former RGS, the Applicant "should report pursuant to the established internal mechanism", in terms of sec. 3 of ST/SGB/2017/2/Rev.1. In the circumstances, even if it were proved that the former RSG retaliated against the Applicant, such proof would not satisfy the sec. 4(b)(i) ST/SGB/2017/2/Rev.1 criteria.

31. Since the Applicant has not proved that at the time, he made the external report he had grounds to believe that he would be subjected to retaliation by OIOS, or the Assistant Secretary-General for Human Resources Management (i.e., the [persons] he should report to pursuant to the established internal mechanism), the Tribunal finds that the criteria in sec. 4(b)(i) of ST/SGB/2017/2/Rev.1 has not been met.

32. Regarding sec. 4(b)(iii) criteria, the dates on which the Applicant is alleged to have corresponded with the media were before the lapse of the sec. 4(b)(iii) six-month period from 18 July 2019 when he filed a report with the OIOS.

33. It is alleged that he corresponded with FF, reporter at the news media, prior to her publication of two articles in 2019 and 2020, that he discussed with her details about confidential internal OIM matters and internal documentation, and that he shared her contact information with other senior staff at OIM and encouraging them

to contact FF. Some of the email exchanges which the Respondent seeks to rely on are dated 4 and 5 of December 2019, 6 December 2019, 10 December 2019, 11 December 2019, and 12 December 2019.

34. Considering that the Applicant's report to OIOS was made on 18 July 2019, the alleged media activities which occurred in December 2019 were not protected under sec. 4(b)(iii).

35. Based on the foregoing, the Tribunal finds that the Applicant has not satisfied the criteria which would support his claim to whistleblower protection.

Harassment and abuse of authority

The legal framework and the basic a

d. The Complainant's "claims of being the victim of disparaging comments arose out of concern over her involvement in a scheme that was proving to be embarrassing for her in her goal of getting a promotion to P-4". The Applicant's "criticism of the handling of [the Investment Fund] investment including putting an inexperienced P-3 staff member in charge of a new \$150 million investment was sincere and well-founded". OIOS "concluded "[t]here was insufficient evidence that [the Applicant] abused his authority and influenced decisions about [the Complainant's] career". The Respondent, however, has "taken the same insufficient evidence to create a false narrative portraying [the Complainant] as a victim".

e. The "case against the Applicant rests entirely on the subjective opinions of [the Complainant] largely drawn from office gossip and hearsay". Her "testimony like her financial analysis is suspect, as shown by the numerous inconsistencies and false assumptions it contains":

i. In her testimony, the Complainant stated, "twice that the

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then conveyed the Applicant's comments to [the Complainant] and to other OIM officials". The "concern expressed over [the Complainant] was limited only to her experience in this particular area of Private Market investments". Despite "the Respondent's efforts to embellish her credentials, the fact

language was used as is conceded supports the conclusion that the attacks were “extremely offensive” and hurtful to the Complainant as per her subject interview.

62. Based on the foregoing considerations, the Tribunal finds that the Complainant had the relevant qualifications and experience. The Applicant’s attacks are neither well founded, nor do they constitute a fair response or comment in the circumstances. The concerns are defamatory of her professionalism and integrity.

63. In resolution of the issue which is the subject of this part of the judgment, the Tribunal finds that the Applicant made disparaging remarks about the Complainant in front of other UNJSPF staff.

Whether the Applicant isolated the Complainant at work

64. The Respondent seeks to rely on the Applicant’s emails of 6, 8, and 27 March 2019, to prove that the Applicant requested that his team members exclude the Complainant from meetings and groups and that on his orders, OIM staff refrained from working with her.

65. The Applicant does not deny that he emailed EC on 6 March 2019, copying his whole team, asking them to: “Please also drop [the Complainant] from [the Investment Fund], as she is not a member of our team. Anyway, wasn’t this approved in the previous meeting?” EC replied: “Per your request, I took [the Complainant] off from [the Investment Fund], but I never put her in [the former RSG] did. Definitely feel free to address that with him should he revert back”.

66. Given that the Applicant’s actions took place during the time he was actively challenging the Complainant’s position in the team, his explanation that he asked that the Complainant be dropped because he thought that her inclusion had been by mistake does not nullify the allegation as laid. EC’s reply indicates that the issue was still alive, the reason she clarified that “but I never put her in—[the former RSG] did. Definitely feel free to address that with him should he revert back”.

67. The Applicant does not dispute the contents of the 8 March 2019 email from WL that “C

am not to work with [the Complainant] on [the Investment Fund]”. He has not

don't want [the Complainant] to get it by default. I hope that [the new RSG] knows that this is one case where he has to make an exception. Of course, [the Complainant] will likely file a complaint if she is not selected" (email of 5 November 2020 to OIM colleagues).

88. The Applicant is also alleged to have made derogatory remarks about the Complainant's work and integrity in emails dated 11 April 2020 and 25 May 2020, to the new RSG, in an effort to harm her professional reputation.

89. In his oral testimony, the Applicant admitted that he contacted the new RSG over the Complainant, and emailed the new RSG on 11 April 2020, stating:

I was surprised after our conversation last week about [the

others, including many senior OIM staff members, criticizing the Complainant's professional experience and capacity to assume a P-4 level position requiring infrastructure investment experience.

93. He sent a second email on the same day (19 September 2019) to the same distribution list stating that, "I still believe that further investments in infrastructure, except for renewals with successful funds such as [name redacted], should wait until OIM hires a qualified P4 with seven years' experience in infrastructure. As you know there is no one currently employed at OIM with those qualifications".

94. [REDACTED]

98. The Tribunal's findings at paras. 40-79 above that: (a) the Applicant wrote the emails containing offensive statements; (b) his concerns were without basis;

commentary on his protected activity and it was her decision to share these comments with the journalist”. Instead, HB is “cited as the primary contact and is cit H a .d,

104. One of OIOS's findings is that OIM had an internal policy on information sensitivity, classification of documents and records management, which is in addition to the bulletins of the Secretary-General: ST/SGB/2007/6 (Information sensitivity, classification and handling), ST/SGB/2007/05 (Record-keeping and the management of United Nations archives) and ST/SGB/2004/15 (Use of information and communication technology resources and data). OIOS found that the policy was last approved on 1 July 2019 by the former RSG.

105. The new RSG,

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investment. I need a non-redacted version to include it in the story and adhere to the [new media] editorial standards. Would you be able to send me the memo in its original version?”.

e. The Applicant’s email dated 11 December 2019 to MR, noting, “I had [a] good off the record chat with the [news media] lady today. She would not say that she talked to the RSG—but apparently he sent her the minutes of the August 27th meeting none of it redacted plus the stepstone memo—pretty amazing. I think it will not be a good article for him. I am glad I got the last word”.

f. The Applicant’s email dated 12 December 2019 to FF confirming their prior discussions, providing his personal email address, and asking her

CMRR shares that were not disclosed in his 2019-2021 United Nations Financial Disclosure statements. It is also alleged that he used the photocopiers at the United Nations to scan contracts and correspondence he had signed as President of CMRR, and that he performed his CMRR functions during his official working hours.

122. While admitting his involvement with CMRR, the Applicant maintains that the entity was neither an occupation nor employment. Further, that it was non-profit volunteer work, which is specifically authorized under ST/AI/2000/13 (Outside activities), sec. 5, as private non-remunerated activities for social or charitable purposes. While he admits that he had shares in the entity, he claims that they had only nominal value and produced no income. He also argues that the requirement for their disclosure had not been set forth in any directive or instruction that the Respondent can cite.

The parties' submissions

123. The Applicant submits that “[t]his is an example of fishing for an issue to raise”. The “allegation covering [his] participation in antique railroad activities 90 miles from New York City over the years is nothing more than a trumped-up charge”. The Applicant “disclosed the activities upon ra

for CMRR in senior roles performing operational and administrative functions since 2006.

Discussion

125. In his oral evidence the Applicant maintained that he did not consider the CMRR activity to be an outside activity needing approval. He explained that he was involved in it before he joined the United Nations, and he mentioned it to his first Director (and to the first Compliance Officer, both of whom felt it was not reportable since the Applicant was a volunteer in the entity. At that time, the compliance procedures were much looser than they are today. As far as he was concerned, the entity was a charitable community service organization in which he did not make any money. His involvement in it was therefore non-reportable.

126. Clearly, the Applicant does not deny that he did not disclose his involvement in CMRR. He only maintains that he was not legally bound to disclose his interest because the entity is a non-profit volunteer/charitable community service organization for which he was doing voluntary work.

127. The Applicant's assertions are, however,

from the former RSG and more recently from the [United Nations] itself,

... [T]he principle of proportionality means that an administrative action should not be more excessive than is necessary for obtaining the desired result. The requirement of proportionality

b. the Applicant was aware that he needed authorization to interact

dated 28 September 2022 and all the supporting documentation. He was informed of his right to seek the assistance of counsel and availed the opportunity to comment on the allegations. He was also granted extensions of time within which to submit