



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2022-UNAT-1220



Dzenan Viteskic
(Appellant)

v.

Secretary -General of the United Nations
(Respondent)

JUDGMENT

Before:	Judge Martha Halfeld , Presiding Judge John Raymond Murphy Judge Sabine Knierim
Case No:	2021-1566
Date:	18 March 2022
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Rupa Mitra

7. On 11 May 2017, OAI notified the Applicant that he was under investigation regarding a workplace harassment and abuse of authority complaint filed by Ms. A.

8. On 19 July 2017, OAI informed the Applicant that after an assessment of the allegations made by Ms. A, it determined that a formal investigation was not warranted and had closed the case.

9. On 10 August 2017, after determining that Ms. A's allegations against the Applicant may not have been made in good faith,

19. By memorandum dated 18 October 2019, the Management Evaluation Unit (“MEU”) informed the Applicant that MEU considered that he did not have standing before the MEU and thus rejected his request as not receivable.

20. On 15 January 2020, the Applicant filed [his UNDT] application.

21. On 19 February 2020, the Respondent’s reply was filed by UN Women. In the reply, UN Women argued that it is not the appropriate organization to defend the contested decision in this case.

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Submissions

Mr. Viteskic's Appeal

19. The Appellant submits that the UNDT failed to address a number of procedural violations which he presented, as summarised below

- (a) the UNMIK Conduct and Discipline Officer misinformed the Applicant that OIOS had closed the investigation into the Applicant's complaint while, in fact, no investigation was conducted by OIOS;
- (b) a violation of OIOS Investigations Manual, section 3.2.2, as to when the Applicant should have been informed that information was received;
- (c) MEU's violation of its own Terms of Reference regarding its obligation not to refer the case to UN Women and deadlines established in the General Assembly resolution A/RES/62/228;
- (d) the failure of OIOS to provide rules or procedures governing assessment;
- (e) the failure of OIOS to disclose documents to UNDT and the Appellant as referenced in its memorandum to the ALD; and
- (e) the misrepresentation of cases in the Administration's reply to the UNDT .

20. The Appellant submits that all of the OIOS arguments for its dismissal of the OAI assessment and its decision not to launch an investigation were "defective"¹³ for the following reasons:

- (a) OIOS labelled the corrective measures as a threat, however reassignment within the section at the same grade or step, without any form of disciplinary or administrative action and when operationally justified, such as replacing a pregnant colleague, was not a punishment and therefore could not be characterised as a threat;
- (b) Efforts to resolve interpersonal efforts were ongoing for months, not two weeks;
- (c) Reassignment letters were issued to five, not three, different staff members, out of which two were actioned and three cancelled by the Appellant's successor, therefore it was not only Ms. A who was reassigned; and

¹³ Impugned Judgment, paras. 25-30.

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32. On the Appellant's claim, which he argued before UNDT, that UNMIK had misinformed him that the OIOS had closed an investigation into his complaint, the UNDT held that a procedural mistake of UNMIK was irrelevant to the contested decision, which was made by OIOS. The Respondent submits that the Appellant provided no explanation as to how UNMIK's alleged action could have affected the contested decision.

33. On the Appellant's claim that the UNDT failed to address his complaint that the MEU violated its terms of reference, the UNDT addressed this by stating that the Administration's response to a request for management evaluation was not a reviewable administrative decision and UNDT would only review the contested decision itself¹⁶.

34. On the Appellant's claim that the UNDT failed to address his claim that OIOS neglected to disclose all documents to him, the Respondent submits that UNDT correctly held that the Appellant had no right to be provided with information from OIOS about what documents it had relied upon in its assessment, relying on Section 4.7 of ST/AI/2017/1.

35. On the Appellant's argument that the OIOS assessment report was unsigned and therefore in violation of the OIOS Investigations Manual, the Respondent submits that this Manu 3w -26.0.

rebuttable presumption of regularity, but it is not for the UNDT to conduct due diligence in this regard.

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50. According to the Respondent, Mr. Viteskic's claim is misplaced that ST/SGB/2011/2 delegates authority for the UN Women Executive Director to represent UN Women before the UNDT and that the representation of a party in a judicial proceeding is a matter for the Administration to decide.

51. Section 2.1(f) of ST/SGB/2011/2 provides that the Executive Director of UN -Women has the authority, in accordance with the United Nations Staff Regulations and Rules, to represent UN-Women before the United Nations Dispute Tribunal in relation to applications filed by staff members of UN Women. After some internal disputes regarding which office was to serve as Counsel for the Respondent, UN Women and the SecretaryGeneral advised the Tribunal that they would act jointly as Counsel for the Respondent.²¹

52. As acknowledged by Mr. Viteskic in his appeal, since 2016, he has been a current staff member of UN Women, although the background facts concern his complaint to UNMIK about the alleged wrongdoing of one of its staff members, Ms. A. UNMIK was also where Mr. Viteskic had previously worked and where he had issued a reassignment contested by Ms. A. In addition, UNMIK (through OIOS) was responsible for the assessment of Mr. Viteskic's complaint against Ms. A and its final report, which is the contested administrative decision.²² These circumstances justify the joint representation by UN -Women, where Mr. Viteskic currently serves, and UNMIK (through AAS/ALD of the UN Secretariat), given that UNMIK was where the events in dispute occurred. These circumstances before the UNDT also justified the granting of an opportunity to supplement the initial reply with the corresponding opportunity for Mr. Viteskic to respond.²³ The Appeals Tribunal does not see any reason to disagree with the UNDT's ruling in this regard.

53. Furthermore, the Appeals Tribunal agrees with the Respondent that, having not contested the joint representation before the UNDT at the time it was first made, and having been afforded the opportunity to answer the supplementary reply (although he made no comment on this), Mr. Viteskic is now estopped from raising this matter on appeal.²⁴

54. Mr. Viteskic maintains that the UNDT failed to consider a number of alleged procedural violations. However, the UNDT addressed the issues of both the UNMIK (OIOS) communication of the documents referenced in its assessment of the OAI case and the outcome of Mr. Viteskic's complaint when it held that Section 4.7 of ST/AI/2017/1, on the right to information related to investigation, provides that "[u]nless expressly provided for in the present instruction or other administrative issuances, staff members and third parties are not entitled to information about an investigation or action taken."²⁵

55. Moreover, as mentioned by the UNDT, in response to his enquiry, Mr. Viteskic received information from both UNMIK and OIOS that OIOS had determined that there were insufficient grounds to pursue an investigation against Ms. A.²⁶ Contrary to Mr. Viteskic's contention, it is not true that it took 17 months between the OIOS decision and the communication to him. If the OIOS' assessment report was concluded on 24 January 2019 and the first communication was made on 28 June 2019²⁷, a period of about five months had elapsed for M. Viteskic to be informed of the outcome of his complaint. Mr. Viteskic argues that this delay affected the direction of his case, his ability to address substantive and procedural flaws, and the scope and content of his 15 January 2020 submission (ST/DO/2020/3830) to the UNDT (ST/DO/2021/94) and the UNDT's decision of 17 July 2021 (ST/DO/2021/190).

had broad discretion in the appreciation of the evidence before it and, although it is clear that Mr. Viteskic

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63. The appeal is hereby dismissed and Judgment UNDT/202 1/0 37