

Case No.

UNITED NATIONS DISPUTE TRIBUNAL

Introduction

1. The Applicant served as a Contract Management Officer at the United Nations Interim Force in Lebanon (“UNIFIL”) at the FS-6 level.

expressing issues with her FRO.⁴

7. On 24 June 2020, the Applicant filed a complaint to the Assistant Secretary-General, Office of Human Resources (“ASG/OHR”), alleging harassment and abuse of authority against her FRO. The ASG/OHR referred the matter to the Office of Internal Oversight Services (“OIOS”) for investigation as an ST/SGB/2019/8 complaint.⁵

8. On 24 August 2020, the OIOS referred the Applicant’s case to the Mission for resolution.⁶

9. From May through December 2019 there were mediation efforts⁷, which, nevertheless, brought no results, while the Applicant’s grievance was being forwarded from one office to another.⁸

10. By letter dated 12 March 2021, the Head of Mission-Force Commander (“HoM/FC”) wrote to the Applicant informing her that in consultation with the Regional Conduct and Discipline Section (“RCDS”), it was determined that the matter involved an unsatisfactory conduct on the part of the Applicant’s FRO and contained issues that could best be addressed through performance management.⁹ The HoM/FC decided to take administrative action pursuant to ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process) that included asking the UNIFIL Chief Supply Chain Management to resume efforts to informally resolve the matter and ensure that both parties fully understand the operational expectations within the Section.¹⁰ The HoM/FC informed the Applicant that he considered that the matter was closed.¹¹

11. The Applicant did not challenge the outcome of her 24 June 2020 complaint

⁴ Application, annex 2, para. 5 (UNDT chronology of events 05.09.22).

⁵ *Ibid.*, at annexes 1(a) and 1(b); reply, page 3, para. 9.

⁶ Reply, page 3, para. 10.

⁷ Annex 2 UNDT (chronology of events 05.09.22), paras 7-10.

⁸ Application, annex 10 (email sent to DMS on 12.12.2019), Annex 2 “chronology of events”.

⁹ Reply, annex R/2, para 3 and application, annex 11.

¹⁰ *Ibid.*, at annex R/2, para. 4 and application, annex 11.

¹¹ *Ibid.*, at annex R/2, para. 7.

members be addressed by way of administrative action.¹⁷

18. Despite the OIC-RCDS's recommendation, the DMS requested UNOMS to resolve the conflict by mediation.¹⁸ In December 2021 and January 2022, a Senior UNOMS Conflict Resolution Officer in Vienna carried out mediation sessions with the parties who refused to sign a mediation agreement.¹⁹

19. On 28 January 2022, UNOMS recommended to the Force Commander "to separate the two staff members from the supervisor and supervis[ee] relationship".²⁰

20. By email dated 3 February 2022, the Applicant wrote to her FRO and to the Chief of Supply Chain Management, alleging that her FRO shouted at her in the presence of other colleagues during a meeting and complaining that the harassment was affecting her health.²¹

21. According to the Respondent, UNIFIL Human Resources Section ("HRS") presented to the DMS two options on 11 February 2022: (i) reassignment of one party; or (ii) reassignment of both parties.²² On 13 April and 10 May 2022, the DMS, the CHRO, and the Chief, Supply Chain held meetings to discuss the two options presented by UNIFIL HRS. They supported the option to reassign both staff members from the Contract Management Unit to different sections within UNIFIL.²³

22. On 27 April 2022, the Applicant requested management evaluation of the implied failure to enact measures to ensure a harmonious work environment and the prevent prohibited conduct such as harassment, discrimination, and abuse of authority by her FRO.²⁴ Her complaint was that since the 12 March 2021 response from the HoM/FC setting out the course of action to address her concerns, the course of action culminated in a recommendation from the Ombudsman "to separate the two staff

¹⁷ Reply, annex R/4.

¹⁸

members from the supervisor and supervis[ee] relationship”, which was not implemented. One of the remedies sought by the Applicant was that the recommended separation of herself and her FRO be implemented.²⁵

23. The DMS met separately with the Applicant and her FRO on 13 May 2022 and advised them of the proposed reassignments.²⁶

24. On 2 June 2022, the HoM/FC notified the Applicant and her FRO of their reassignments to other sections.²⁷

25. The MEU replied on 6 June 2022 noting that the UNIFIL Administration had already advised the Applicant of her lateral reassignment, and, as such, that her request for a management evaluation was moot.²⁸

26. On 1 July 2022, the Applicant was reassigned to the UNIFIL Procurement Unit. The same day, the Applicant's FRO was reassigned to the position of Chief, Contingent Owned Equipment at the P-4 level.²⁹

27. The Applicant challenged the reassignment in a separate case No: UNDT/NBI/2022/108.

Considerations

28. The Respondent case is that the application should be dismissed as not receivable due to the failure by the Applicant to identify a specific administrative decision to be challenged in clear and precise terms, alternatively – that the Applicant did not request a timely management evaluation.

29. The Tribunal finds that the Applicant filed two formal complaints, alleging workplace harassment by her supervisor. The complaint dated 23 May 2019 and repeated in a memorandum of 24 June 2020 (“first complaint”) resulted in a decision

²⁵ *Ibid.*, at Section VII, page 5, para. 3 (2nd para 3).

²⁶ Reply, page 5, para. 20.

²⁷ *Ibid.*, at page 5, para. 21. Reply, annex R/5.

²⁸ Application section VII, page 5, para 4. Reply, annex R/5.

²⁹ Reply, page 5, paras. 23 and 24.

sufficiently identified the implied decision and that there is no basis to claim the untimeliness of the application.

33. So interpreted, however, the application is not receivable for the reasons stated in the management evaluation, namely, that the principal claim against administrative inaction has become moot following the reassignments of both the Applicant and her supervisor. The reassignment decision has created an essentially different factual and legal outcome of the Applicant's complaint under ST/SGB/2019/8, it has been submitted for a timely management evaluation and timely appealed. Whereas the Applicant also claimed compensation for moral damages, she may request this remedy in the case No. UNDT/NBI/2022/108, of which she was informed during the case management discussion. The present proceedings, however, have lost their *raison d'etre*.

JUDGMENT

34. The application is dismissed as not receivable.

35. Documents submitted in the present case are admitted into evidence in case No. UNDT/NBI/2022/108.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 24th day of March 2023

Entered in the Register on this 24th day of March 2023

(Signed)

Eric Muli, Legal Officer, for,

Abena Kwakye-Berko, Registrar, Nairobi