





6.



1) stymied innovation by staff members;



Cluster 4.<sup>21</sup>

20. In her reply dated 2 May 2021, Ms. Dashti declined the meeting proposal and vehemently denied Applicant false accusation and inaccurate statement . Her response, copied to senior staff, contains, inter alia, the following language:

The current work environment at ESCWA is not toxic. If you and a very small minority has this feeling due to accumulated negativity from past years that you are not able to overcome; does not give you the right to generalize how the rest of the organization feel about our new work environment. Positive thinking, trust, effectiveness, open communication, collaboration, coordination forward looking, and creativity are part of the new work environment that apparently you and

we need to do work effective and efficient. Requiring staff to be efficient and effective in delivering their work does not mean at all there is a lack of appreciation for their hard work. And you being in

Reading this statement made me pity you and the whoever

unfortunately your thinking where to position the cluster was narrow

It does not fit whether in your presence, with  
Further, to ease your  
concern, do not expect that I will ever notify you beforehand about the





Accordingly, the interview was cancelled and I sincerely apologize that  
28

25. OIOS also cleared Ms. Haddad.<sup>29</sup> The Applicant contends that since the consultancy had been managed by Ms. Haddad, an accusation arises from his defence n and was aimed at discrediting the Applicant and removing him from the position.<sup>30</sup> her, as a manager, to raise a concern.

26. Undisputedly, Ms. Dashit insisted that Mr. Fraihat act as Officer-in-Charge ( OiC ) Ms. Dashti testified that this was because some s

accusation of the Applicant, delivered in a threatening manner.<sup>33</sup> Three particular issues were raised: First, upon inquiry about a delay in project reviews, which rested in the sole competence of Ms. Dashti, Ms. Dashti replied that it was a fault of the cluster leader who had not submitted the projects on time. This was untrue, because the Applicant had collected all the projects, had the staff review them and submitted to Ms. Dashti approximately nine months before.<sup>34</sup> Second, staff in the General Service Category raised concerns regarding their career growth. Some had applied for senior positions and succeeded while others had stagnated in their positions. Ms. Dashti blamed the Applicant for the non-promotion of staff in the General Service Category and the limited budget support. These accusations were unjustified because the matters of budget and staff promotions had been centralised in Ms. Dashti, whereas the Applicant had always been supportive of staff.<sup>35</sup> As a third issue, Ms. Dashti accused Cluster Four senior staff of not holding regular meetings and not monitoring staff. This was also untrue, because section meetings had been held regularly; the senior staff, however, did not consider that they were expected to report on them.<sup>36</sup> The Applicant was interrupted every time he tried to explain anything; he was terribly upset.<sup>37</sup>

29. Ms. Dashti denies making such accusations at the meetings. She, however, admits having confronted the staff on their performance, stating that hard work was not enough if it was ineffective. She elaborates that some staff members were reluctant to implement the reforms at ESCWA and she had to remind them of their mandate and the need to change their work culture. On the issue of promotion opportunities, Ms. Dashti emphasizes that she explained to the staff that to be more competitive, the

Leaders to meet more regularly, discuss their work plans and agree on the deliverables.

She gave an example

34. Ms. Dashti assigned Mr. Fraihat as Chief of Cluster Four.<sup>43</sup>

35. Admittedly, the task of the Applicant was to work on the data ecosystem. It is also admitted<sup>44</sup> and documented<sup>45</sup> that the Applicant had worked on the Data Ecosystem already in early 2021, as part of the Data Strategy Action Group, comprising data, technology and information technology pillars, with the Applicant, and Messrs. Fraihat and Al-Awah being responsible for the pillars, respectively.<sup>46</sup> The data strategy was nearly finalised at the date of the Applica

36. Notwithstanding the swap of positions, t  
on 21 September 2021, still and title  
30400230 Chief of Service, Statistics,<sup>47</sup> even though it had already been occupied by Mr. Fraihat.<sup>48</sup> When the Applicant requested Mr. Ahmad Dik, the Director of Administration for the Personnel Action on his reassignment, the Director of Administration sent the Applicant an excerpt from the Personnel Action which indicated the title of Adviser. Nevertheless, when the Applicant downloaded the Personnel Action from Umoja, it indicated the old job title as Chief of Service, Statistics.

37. It is admitted that the Applicant had been moved to the Office of the Executive Secretary with his post.<sup>49</sup> The Respondent confirms that the position of Adviser on Innovation and Technology.<sup>50</sup> The Respondent explains that there was no need to reclassify the post given that the Data Strategy was a temporary project scheduled to end in December 2022.<sup>51</sup> Ms. Dashti testified that the position would need to be classified, to respond to the need to oversee the Data Strategy.<sup>52</sup> The Respondent further indicates that the position is still vacant.

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<sup>43</sup> Application, section VIII, para. 3.

<sup>44</sup> Ms. Dashti testimony, 25 May 2023.

<sup>45</sup> Reply, annex 2.

<sup>46</sup> Testimony of Mr. Al-Alwah on 25 May 2023.

<sup>47</sup> Application, annex 2 (management evaluation request, attachment 12, at p. 38).

<sup>48</sup> Application, section VIII, para. 3, undisputed.

<sup>49</sup> testimony, 25 May 2023.

<sup>50</sup> Case management discussion held on 17 October 2022 and on 27 April 2023.

<sup>51</sup> reply, annex 3.

<sup>52</sup> Ms. Dashti testimony, 25 May 2023.

Since the Applicant took early retirement, if he so wishes, he can return and occupy it, but he cannot be returned to Head of Cluster Four.<sup>53</sup>

38. The Applicant case is that in the new role he had no managerial functions. He documents that, indeed, the supervisory functions of the first and the second reporting officer over all regular staff of Cluster Four: Statistics, Information Society and Technology had been transferred to Mr. Haidar Fraihat.<sup>54</sup> The Tribunal heard from











United Nations in analyzing socioeconomic development issues through statistical data.<sup>78</sup>

54. The Respondent avers that the decision had \_\_\_\_\_ job security as t \_\_\_\_\_ position did not change<sup>79</sup>. He was reassigned with the post that he encumbered and continued to serve on a permanent appointment funded by regular budget at the D-1 level until his retirement.<sup>80</sup>

55. \_\_\_\_\_ claim that he was stripped of managerial responsibilities, the Respondent \_\_\_\_\_ establish such a need and submit a request for necessary resources to the Executive Secretary. The Applicant has not produced any evidence that the Executive Secretary rejected any requests by him to recruit additional staff to support him in the position.<sup>81</sup>

56. Regarding the claim that the contested decision was tainted by improper motives, the Respondent argues that the Applicant has produced no evidence to support it. The reassignment was in line with the ongoing work reforms within ESCWA.<sup>82</sup> There was no ill will, nor is there evidence that the contested decision is related to the \_\_\_\_\_

In fact, his most recent performance appraisal rated him as successfully \_\_\_\_\_ .<sup>83</sup>

57. The request to OIOS to investigate the possible misconduct against the Applicant, is not evidence of improper motive. Pursuant to staff rule 2.1(c), the Executive Secretary had a duty to report any breach of the Organization \_\_\_\_\_ and rules. The duty to report is independent of the result of any subsequent investigations.<sup>84</sup>

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<sup>78</sup> Reply, para. 11.

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<sup>80</sup> *Ibid.*

<sup>81</sup>

(NBI/2023), para. 9.

<sup>82</sup> Application, annex 1.

<sup>83</sup> Reply, para. 19-20.

<sup>84</sup>

(NBI/2023), para. 12.



of the context of ST/SGB/2017/2/Rev.1, even if the retaliatory motive is alleged. As confirmed by the United Nations Appeals Tribunal

part of its judicial review, it is necessary to determine whether the decision was vitiated

<sup>87</sup> The operation

of the same

ST/SGB/2017/2/Rev.1, as well as expressed by the Appeals Tribunal in *Messinger* in relation to ST/SGB/2008/5 proceedings, which retains actuality under section 5.6 of ST/SGB/2019/8 (Addressing discrimination harassment, including sexual harassment, and abuse of authority):

It is clear that the UNDT is not clothed with jurisdiction to investigate harassment complaints under Article 2 of the UNDT Statute. *However, for the purpose of determining if the impugned administrative decisions were improperly motivated, it is within the competence of the UNDT to examine allegations of harassment* (emphasis added).<sup>88</sup>

63. Last, an applicant before UNDT, who has interest in challenging an administrative decision is bound to bring his/her action within the statutory deadlines, and thus, not only is not obligated, but simply has no time to institute ST/SGB/2017/2/Rev.1 proceedings, let alone wait for the outcome. As illustrated by the present

has been investigating his complaint of harassment for two years now. The outcome of the latter may become an appealable decision in the future; the application against the present reassignment decision, however, has a procedural course in its own right and has properly been put before the Tribunal.

64.



to the Secretary-

convinced that the good of the Organization animated the creation of the post.

68. First, the Tribunal agrees that the description of duties is general and vague and  
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not correspond with vesting responsibilities appropriate to a D-1 level position. The  
workplan devised for the period April 2022-March 2023<sup>93</sup> is similarly vague and  
c

in contradiction

out and was confirmed by Ms. Dashti and Mr. Al-Awah in the hearing, the post had not been created at the beginning of the work on data strategy and remained vacant

. Ms. Dashti had sufficient time to prepare and issue a vacancy notice for the post of Senior Advisor prior to

separation from service or any time after. Yet, it was never advertised. The Tribunal, further notes that there is a contradiction between the Respondent

position was not in any way rendered precarious on the one hand, and, on the other hand,

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Report. Additionally, however, in relation to the Applicant, there are indications of an ulterior motive on the part of the Executive Secretary.

72. The Tribunal would be prepared to concede that the first meeting with the staff of the Statistics Division, as testified to by Witnesses Nos. Two and Three, only gave an impression of a threatening and intimidating attitude, possibly caused by the aggressive communication style of the Executive Secretary, which the Tribunal had an opportunity to experience directly at the hearing, without necessarily a negative intention on her part. However, subsequent email communications described *supra* in this judgment clearly show that there was a mounting animosity between her and the Applicant. The December 2019 statement in a draft reform plan constitutes an outright attack on the Directors and Section Chiefs, followed by further confrontations in February 2021 and April 2021, where the Applicant stood his ground on management issues in his area of responsibility.

73. As of May 2021, there was open hostility toward the Applicant, including the aggressive communication of 2 May 2021, followed by the June 2021 reporting the Applicant to OIOS under the allegations of fraud. The 2 May 2021 response is disproportionate in the tone and expressions used, especially given its distribution to multiple recipients; moreover, it admits to sidelining the Applicant in the collection of data, his area of responsibility. As concerns reporting the Applicant to OIOS, the Tribunal considers that the duty to report under staff rule 2.1(c) arises upon *prima facie* evidence of misconduct. Accusing a senior staff member of fraud in approving a report should not have been done without examining the substance of the report, which was accessible to the Executive Secretary in terms of both the substance and the language, and without a minimal inquiry about the aspects that she deemed irregular. The Executive Secretary apparently did neither. That OIOS dismissed the case without even interviewing the Applicant, indicates that a plausible explanation had been easily available. The Tribunal considers that in both instances the Executive Secretary



74. Other actions of the Executive Secretary demonstrate that she was marching the Applicant to the door: the offer for agreed termination, inserting Mr. Fraihat as OiC of Cluster Four and, finally, the meeting of 14 September 2021 where the Applicant was publicly accused of underperformance and impeding staff advancement. There is no dispute about the substance of the issues discussed in this meeting. As to the derogatory tenor of it, the Tribunal gives credence to Witnesses Nos. Two and Three. The Tribunal considered that the witnesses do not report to the Applicant since September 2021, do not remain in any professional relationship with him, have no interest in the outcome of the case and through testifying before the UNDT took the risk of straining their work relations in light of the style of the Applicant.

75. All considered, the reassignment emerges as a repressive act in response to the of the A and disparaging comments dispensed by peers fit the overall picture of the Applicant having fallen out of grace.

76. Conversely, the Tribunal has not been presented with evidence of any unlawful or otherwise inappropriate conduct on the part of the Applicant, and no such conduct is alleged.

77.











hospitalization or sick leave, the Tribunal is however, mindful that, in all appearances, seeking sick leave, unless absolutely necessary, would be out of character for the Applicant. The damage to the reputation was short-lasting and, it is hoped, will be compensated through this judgment.

95. In the entirety of the circumstances, and taking into consideration jurisprudence on point<sup>108</sup>, the Tribunal considers that compensation of five month net base salary will be appropriate.

### **JUDGMENT**

96. By way of compensation for non-pecuniary damages, the Respondent shall pay the Applicant an equivalent of five net base salary at the level of the at the time of his retirement.

97. This amount shall be paid within 60 days from the date this judgment becomes executable. If the sum is not paid within the 60-day period, an additional five percent shall be added to the US Prime Rate until the date of payment.

98. All other pleas are dismissed.

*(Signed)*

Judge Agnieszka Klonowiecka-Milart

Dated this 30<sup>th</sup> day of June 2023

Entered in the Register on this 30<sup>th</sup> day of June 2023

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi

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<sup>108</sup> *Dieng* 2021-UNAT-1118; *Kallon* 2017-UNAT-742; *Maslei* 2016-UNAT-637; *Civic* 2020-UNAT-1069.