



Introduction

1. The Applicant is the Deputy Head of Office and Director of Political Affairs working with the United Nations Office to the African Union (“UNOAU”), based in Addis Ababa, Ethiopia.¹
2. By way of an application filed on 14 January 2021, the Applicant contests the

welcomed the referral of the matter to the Ombudsman.⁵

7. On 30 March 2020, the Applicant submitted a formal complaint of discrimination to the Secretary-General. Specifically, he requested an investigation into the discriminatory behavior of the SRSG pursuant to ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority).⁶

8. On 9 April 2020, Ms. Phyllis Wang, on behalf of the Executive Office of the Secretary-General, acknowledged receipt of the Applicant's complaint and informed him that his complaint had been forwarded to OIOS.⁷

9. On 6 May 2020, OIOS informed the Applicant, among others, that since the SRSG had requested an informal resolution of the matter, OIOS had placed his complaint in "suspense" expecting the matter to be resolved informally.⁸

10. On 14 May 2020, the Applicant requested management evaluation challenging the OIOS's decision of placing his complaint in suspense.⁹ On 29 May 2020, the Management Evaluation Unit ("MEU") rejected the Applicant's request on the ground that the OIOS had not yet taken a final decision on whether or not to investigate his complaint, and thus his request was premature.¹⁰

11. On 6 August 2020, the Applicant wrote to OIOS seeking an update on his complaint and inquired whether his complaint would be held in suspense indefinitely or for a determined period of time.¹¹ On the same day, OIOS reiterated the reasons contained in their email of 6 May 2020 and informed the Applicant that his complaint was now closed in the OIOS case management system ("the contested decision").¹²

12. On 15 September 2020, the Applicant requested management evaluation of

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OIOS's decision to not investigate his complaint.¹³ The MEU has yet to respond.¹⁴

Submissions

Applicant's submissions

13. The Applicant submits that OIOS's decision to not investigate the allegations set forth in his complaint was

Respondent's submissions

17. Relying on *Nadeau*¹⁷, the Respondent submits that the Administration has considerable discretion in deciding whether or not to investigate a complaint. He opines that the staff member has no absolute right to demand an investigation of his or her complaint. An investigation may only be undertaken when the matters referred to in section 5.5 of ST/AI/2017/1 have been taken into account and, taking all matters into consideration, there are sufficient grounds for reasons to believe that a staff member has engaged in unsatisfactory conduct for which a disciplinary measure may be imposed. Lacking such grounds, the Appeals Tribunal has concluded that the Administration is not allowed to initiate an investigation because such an investigation can have a negative impact on the staff member concerned.¹⁸

18. The Respondent further contends that in reviewing the complaint, OIOS had before it the allegations made by the Applicant against SRSG and the detailed response by the SRSG in her email of 2 March 2020. On 6 May 2020, OIOS informed the

the differing accounts of the Applicant and the SRSG detailed in the contemporaneous email exchange between 29 February 2020 and 2 March 2020.

20. The Respondent therefore, maintains that OIOS acted in accordance with the procedures set down in ST/SGB/2019/8 and ST/AI/2017/1, taking into account all relevant considerations in reaching its decision under section 5.1 of ST/AI/2017/1 to take no action on the complaint.

21. The Respondent thus contends that there is no foundation for the substantive claim by the Applicant, nor any foundation for any award of compensation. Accordingly, the Respondent requests the Tribunal to reject the application in its entirety.

Applicable law

22. Section 1.2 of ST/SGB/2019/8 defines prohibited conduct to include discrimination, as follows:

24. Factors that are relevant in the assessment of a complaint are detailed in section 5.5

Considerations

26. In reviewing the complaint, this Tribunal had before it the allegations made by the Applicant against the SRSG and the detailed response provided by the SRSG in her email of 2 March 2020.

27. As referred to above, the Applicant by way of email of 29 February 2020, challenged the SRSG for not inviting him to the meeting held on 28 February 2020 and detailed a series of other grievances concerning, among other things, failing to invite him to other senior-level meetings over the preceding year, transparency in communications between them and, generally, the nature of the relationship between the SRSG and the Applicant.

28. Specifically, the Applicant stated:

On 27 February 2020, the SRSG told me that I could not attend a meeting to be held next day at the African Union Commission (“AUC”) because in her own words “you are not an African”. This was direct face-to-face discrimination, as per the terms of ST/SGB/2019/8, under which I submitted my complaint. Furthermore, she subsequently invited several less senior UNOAU colleagues of African origin to accompany her to this meeting.

In attempting to justify her position, the SRSG said “sometimes I have to act like an African politician rather than a UN technocrat”, and “we should not impose UN values on the AU”. Given that the discussion focused on the SRSG barring me from attending a meeting at the AUC based on my race/nationality, the value at stake is ‘respect for diversity’ a core UN value. She furthermore, identified a member of the AUC leadership, stating the individual would not want me in attendance and that my presence would constrain the discussions, directly inferring that my race/nationality was an obstacle to professional engagement with the AUC leadership; effectively and subjectively accusing members of the AUC leadership of harboring discriminatory attitudes.

I wrote to the SRSG on 29 February expressing my deep concern for her discriminatory conduct (para. 4.1 ST/SGB.2019/8), which has also included: systematic exclusion from all of the meetings she has organized with the AUC leadership since her arrival to post in January 2019; direct obstruction by the SRSG to my access to Notes-to-File of meetings conducted by the SRSG with the AUC leadership; exclusion from a previous meeting with Southern African Development

I have been requested by my counterpart to hold as confidential information. It's necessary to be able to keep our counterparts confidences in order to build a relationship of trust. Anytime you want to have a discussion on a meeting I have held and discussions that have taken place please just come and ask me, I have no problem sharing the details with you myself.

Best Regards,

SRSG

31. The SRSG also informed the Applicant that she would send his email and her

reply 1 0.0 0.0 1.0 981 0.0 0.0 1.0 99.36 541.2 Tm [(r)-7(e)3(p)-20(l)17(y)19()9(1 0.0 0.0 1.0 981 0.0 0.0

misunderstanding of roles, underpinned by a mutual and obvious

the remedies sought. As such, the Tribunal rejects the application in its entirety.

JUDGMENT

36. The application is hereby dismissed.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 11th day of November 2021

Entered in the Register on this 11th day of November 2021

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi