

TO: Ms. Joan Elise Dubinsky
A: Director,
UN Ethics Office

DATE: 9 January 2014
REFERENCE:

FROM: Peter A Gallo,
DE: Investigator
Investigations Division
Office of Internal Oversight Services



SUBJECT: **Reconsideration of Ethics Office Decision of 23 July 2013**
OBJET:

1. On 18 July 2013, I submitted a request to your office pursuant to ST/SGB/2005/21 for 'Protection against Retaliation', citing as the 'protected act' a complaint of harassment and abuse of authority which I had made to the Director, Investigations Division, OIOS on 11 March 2013, under the provisions of ST/SGB/2008/5.
2. That complaint specifically included the name of Michael Dudley, who you will be aware was also the subject of complaints filed by Ms. Ai-Loan Nguyen-Kropp and her then supervisor, Mr. Florin Postica, the Applicants in UNDT/2013/176 (20 December 2013). That judgment also indicates that both of them also filed other cases with the Tribunal (2011/054 & 2011/055) against the finding of your office that they were not subject to retaliation, by the same Michael Dudley.
3. I was not aware of this background at the time I submitted a request to your office.
4. In your response to me on 23 July 2013, your office rejected my request and reached a similar finding. Your finding at para 9(a) therein, however, is predicated on undue emphasis on the word 'evidence' in ST/SGB/2005/21, to the exclusion of the prior words 'information or' – thus begging the question of precisely what the 2,000 word letter is actually composed of, if it was not *information*.
5. Moreover, with regard to the coercion referred to therein, my letter of 11 March - the 'protected act' - refers to a specific email, sent by a named person at a precise time and describes the contents of that email. You have disregarded that as indicating evidence.
6. Thereafter, in 9(b) your Office concluded that my performance evaluation was attributable to "*prior, documented performance shortcomings*" thereby disregarding the substance of the complaint in its entirety. That has to be prejudicial; it assumes the existence of the very evidence that was denied to me - evidence to show that the PIP was actually warranted - and the absence of which resulted in the complaint being made in the first place.

7. In addition, without even questioning the legitimacy of the alleged “*prior documented performance shortcomings*”, the Ethics Office would appear to exclude the possibility, that a staff member may indeed have improved his performance, which is precisely the objective of ST/AI/2010/5. In the absence of evidence of that performance - which is the case here - your office appears to hold that management have an automatic right to put a staff member on a PIP, regardless of whether the alleged *performance shortcomings* have been remedied or not, and without the need to actually identify them, as is clearly stated, as a condition precedent, in Section 10.1. Having read ST/AI/2010/5, I cannot agree with that interpretation.
8. In light of that and various other pieces of new information that have since come to my attention, in addition of course to the UNDT/2013/176, I believe that you may wish to take this opportunity to reconsider your decision.
9. Of particular relevance and interest are Meeran J.’s comments on the legal test for retaliation, the burden of proof of retaliatory intent (paras 127 to 134), which indicate to me that I did indeed discharge that burden of proof when I submitted my original request for protection on 18 July 2013. I provided your office with evidence to establish a *prima facie* case of retaliatory action against me, for which protection is warranted in accordance with ST/SGB/2005/21. It is a coincidence that one of the individuals named in my complaint, of harassment and abuse of authority, happened to be Michael Dudley, whose history was known to you.
10. Protection from your office was sought because of retaliatory action experienced after I made a complaint in which he was involved. While he was neither my FRO nor SRO, he actively involved himself in “encouraging” me to sign the draft PIP as early as Monday 4 March, and remained active in the matter thereafter. The UNDT/2013/176 judgment establishes a pattern of retaliatory behavior on the part of Michael Dudley in particular, not least of which were threats made against an Under-Secretary-General as described in para 137(b), and threats made to Ms. Nguyen-Kropp of further and greater retaliation through her ePAS.
11. Given the nature of the facts established in *Nguyen-Kropp and Postica* and others of which I had no prior knowledge at the time of my request for protection against retaliatory action to your office on 18 July, I would respectfully request that your decision of 23 July 2013 rejecting my request for protection be reconsidered.
12. Should you be prepared to consider doing so, I shall be happy to provide additional; supporting information, as well as particulars of further ongoing acts of retaliation that have taken place since that date, all of which can similarly be attributed to the same ‘protected act’ of 11 March 2013.