



UNITED NATIONS DISPUTE TRIBUNAL

PETER ANTHONY GALLO

-v-

SECRETARY-GENERAL
OF THE UNITED NATIONS

[No. 5]

APPLICATION

Registry: New York

UNDT case number:

Date of application:

Counsel for Applicant: Mr. Paul Harris. SC

Counsel for Respondent:

Notice: This application should not exceed 10 pages (excluding supporting documents).

I. Applicant's general information

1. Title: Mr.
2. Surname: **Gallo**
3. First name: **Peter**
4. Middle Name: **Anthony**
5. Current UN staff member:
 - a. **Fixed term.** 2 Years, ending 16 March 2015
 - b. **P4/8**
 - c. **Investigator.**
 - d. **Office of Internal Oversight Services / Investigations Division**
 - e. **New York**
6. Index No.: **66715**
7. Date of Birth: **28 May 1962**
8. Nationality: **British**

II. Applicant's employment information at the time of the contested decision

Same as above

III. Applicant's contact information

1. Your contact information:
 - a. Email address for correspondence: **gweilicus@gmail.com**
 - b. Optional email address: *none*
 - c. Cellular phone: **917-575-8835**
 - d. Work phone: *not accessible*
 - e. Mailing address for service of documents: **244 Halstead Ave, Apt 3E
Harrison, NY 10528**

IV. Applicant's representation

1. Are you assisted by a legal representative? Yes No
2. If yes, identify whether you are represented by:
 OSLA;
 a volunteer (staff member or former staff member); or
 a private lawyer.
3. Legal representative's contact information:
 1. Last name: **Harris**
 2. First name: **Paul**
 3. Place of work and functional title: **Doughty Street Chambers, London.
Senior Counsel**
 4. Email address: **paul.harris@dsl.com**
 5. Cellular phone: **+44 7865 514920**
 6. Work phone: **+44 7827 572040**
 7. Facsimile:
 8. Mailing address: **20 Burgess Mead, Oxford OX2 0XP, England**

If you are represented by a private lawyer, provide details of jurisdiction in which he or she is admitted to practice and date of admission to practice: **England & Wales. Hong Kong**

V. Details of the contested decision

- 5.1 On 6 November 2014, a decision was taken by **Mr. Yukio Takasu, Under-Secretary-General, Department of Management**, with the consent and approval of **Ms. Susana Malcorra, Chef du Cabinet**, to refer to UNICEF the responsibility to make a determination of misconduct on the basis of the report of a fact finding panel formed under ST/SGB/2008/5.
- 5.2 The decision to appoint the panel whose report forms the subject of this referral has already challenged before the Tribunal and remains pending as UNDT/NY/2014/017.

VI. Management evaluation

1. Have you requested a management evaluation of the contested decision? **Yes**
2. If yes, when (date)? **16 January 2014**

3. Have you received a response? **Yes**
4. If yes, date of the response and date on which you received it: **26 January 2015¹**

VII. Summary of the facts of the case or facts relied on

- 7.1 On 31 January 2014, Ms Carman Lapointe USG/OIOS, appointed a panel under ST/SGB/2008/5 to investigate as 'harassment' an incident on 14 January 2014. This decision was challenged and is currently before the Tribunal as UNDT/NY/2013/017.
- 7.2 A fact finding panel was subsequently formed, conducted an investigation and submitted a report to Ms Lapointe as the 'responsible official' on 31 March 2014. Ms. Lapointe forwarded that report to the ASG/OHRM on 9 April 2014. That decision is the subject of an application to the Tribunal of even date with the date hereof.
- 7.3 On 6 November 2014, the Tribunal issued Order No.300 (NY/2014), convening a Case Management Meeting on UNDT/NY/2014/017.
- 7.4 Also on 6 November 2014, Mr. Takasu wrote to Mr. Anthony Lake, Executive Director of UNICEF, to request his assistance in making a decision under ST/SGB/2008/5 para 5.18(c) to make a determination of misconduct on the basis of the report of the fact finding panel. This was approved by Ms Malcorra, the Chef du Cabinet. [*Attachment 1. Page 4*]
- 7.5 On 28 November, in compliance with Order 300, the Respondent advised the Tribunal that a decision had been made to assign the responsibility to UNICEF, and Mr Takasu's decision was subsequently communicated to the Applicant on 1 December 2014. [*Attachment 2*]
- 7.6 On 22 December 2014, UNICEF advised the Applicant that they had first been approached on the matter in June 2014, and that working level discussions had taken place between July and September 2014 in order to determine the scope of the delegation, and the matter was discussed by unspecified senior officials at the Secretariat in October 2014. [*Attachment 3*]

VIII. Grounds for contesting the administrative decision

8.1 Ultra Vires

- 8.1(a) Neither ST/SGB/2008/5, ST/AI/371 nor any other statutory instrument known to the Applicant empowers any official who has legal obligation to make a decision under either

¹ MEU/044-15iR [NV]

of those instruments to delegate any decision-making authority to any Third Party. As such, the delegation appears to have been *ex facie* improper.

- 8.1(b) Notwithstanding the foregoing, a perceived conflict situation was recognised to exist Mr. Takasu acknowledged that both the Department of Management and the Office of Human Resources Management were conflicted on account of their involvement in previous unresolved issues involving the parties, and recognised that it would be preferable to refer the matter to entity outside of the United Nations Secretariat so that the decision could be made by any office not under his control.
- 8.1(c) Rather than referring the matter to another department to make arrangements on how the conflict could be circumvented, Mr. Takasu himself selected UNICEF for the task and made the necessary arrangements with them. [Attachment 2. Para 2]
- 8.1(d) In her note to Mr. Takasu dated 6 November, when she made reference to Mr. Takasu's note of 29 October 2014, Ms. Malcorra conveyed “*approval of your proposal as enunciated in the aforesaid communication*”. (Emphasis added) [Attachment 1 Page 4]
- 8.1(e) The Chef du Cabinet has no authority to intervene in the disposal of disciplinary matters, and as such has no power to legitimise any invalid or tainted decision taken by the USG/Management.

8.2 Conflict of Interests : Takasu

- 8.2(a) If the Department of Management had a conflict that prevented them from making a decision under ST/SGB/2008/5 para 5.19; it follows that they would not be impartial in making a selection as to who should make the decision on their behalf.
- 8.2(b) Furthermore, Mr. Takasu has an additional conflict in this case in that the Applicant has also raised UNDT/NY/2014/027; challenging his decision to clear Michael Dudley (the original complainant in the misconduct complaint being considered) and others in a misconduct complaint dated 11 March 2013 in which Ms. Lapointe failed to take any action.²

8.3 Conflict of Interests : Malcorra

- 8.3(a) Moreover, on 12 March 2014, the Director of the Ethics Office recused herself from making a preliminary finding of retaliation in an application filed by the Applicant for protection against retaliation under ST/SGB/2005/21 because of her relationship with the parties in OIOS responsible for that actions that might have to be deemed to be retaliation. In recusing the Ethics Office from making any decision on the retaliation, the Director of the Ethics Office passed her responsibility under ST/SGB/205/21 to Ms. Malcorra, the

² UNDT/NY/2014/027 refers

Chef du Cabinet.³

- 8.3(b) Ms. Malcorra took no action on the application for Protection against Retaliation, but on 6 November 2014, approved Mr. Takasu's proposal to refer the present matter to UNICEF. Having acquired a responsibility to make a determination of retaliation, Ms. Malcorra had a conflict of interests and should have recused herself; she failed to do so.

IX. What remedies are you seeking?

- 9.1 Rescission of the decision to refer the report of the Fact-Finding Panel to UNICEF.
9.2 Consolidation of the present application with **UNDT/NY/2014/017**.

X. Supporting documents		
<u>Annex</u>	<u>Title</u>	<u>Date</u>
1	Takasu letter to Anthony Lake re Harassment case.	6 Nov 14
2	Takasu letter to the Applicant	1 Dec 14
3	Lake Letter to Applicant	22 Dec 14

XI. Signature and certification

I hereby certify that to the best of my knowledge the information provided in this application form is true, accurate and complete and all copies submitted to the Dispute Tribunal are true copies of the original documents.

Applicant: Peter Anthony Gallo

Signature:

Date:

Legal Representative: Paul Harris SC

Signature:

Date:

³ Attachment 12 to Application UNDT/NY/2014/017