

**UNITED  
NATIONS**



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2014/017

Date: 21 April 2014

Original: English

**Before: A Judge of the Dispute Tribunal**

**Registry: New York**

**Registrar: Hafida Lahiouel**

**GALLO**

**v.**

**THE SECRETARY-GENERAL OF THE UNITED NATIONS**

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**RESPONDENT'S REPLY**

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**Counsel for the Applicant:**

Richard Kenneth Cameron

**Counsel for the Respondent:**

Stephen Margetts, ALS/OHRM

Sarahi Lim Baró, ALS/OHRM

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**UNITED NATIONS DISPUTE TRIBUNAL**

**Case No.: UNDT/NY/2014/017**

**GALLO**

**v.**

**THE SECRETARY-GENERAL OF THE UNITED NATIONS**

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**RESPONDENT'S REPLY**

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**I. INTRODUCTION**

1. On 20 March 2014, the Applicant filed an Application contesting the decision of the Under-Secretary-General of the Office of Internal Oversight Services (USG/OIOS) to establish a fact-finding panel (the Panel) pursuant to ST/SGB/2008/5, to investigate a complaint against the Applicant of discrimination, harassment or abuse of authority. The Applicant claims that the decision was motivated by bad faith and conflict of interest on the part of the USG/OIOS. He challenges the composition of the Panel. As of the date of the Application, the panel had not submitted its report to the USG/OIOS concerning the fact-finding investigation.

2. The Application is not receivable *ratione materiae*. The Applicant does not challenge a final administrative decision under Article 2(1)(a) of the Dispute Tribunal's Statute. The appointment of the Panel is a preliminary step in the process of investigating a third party complaint against the Applicant under ST/SGB/2008/5, *Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority*. Only a final administrative decision, reached at the conclusion of the formal procedures under ST/SGB/2008/5, may be appealed.

3. Should the Dispute Tribunal find the Application receivable, the Applicant's claims concerning the rationale behind the decision and the composition of the Panel are without merit. The decision was made within the discretion of the USG/OIOS in accordance with the procedures established by ST/SGB/2008/5.

## II. RECEIVABILITY

4. The decision to appoint the Panel does not constitute a final administrative decision for the purposes of Article 2(1)(a) of the Statute. The appointment of the Panel is a preliminary step in the formal procedures to investigate a third party complaint of prohibited conduct under ST/SGB/2008/5. The Applicant may only challenge a final administrative decision taken pursuant to Section 5.18 (c) of ST/SGB/2008/5, at the conclusion of the formal procedures (*Nwuke*, 2010-UNAT-099, para. 36) such a challenge may include the appointment and composition of the Panel. The scope of any appeal is limited to any challenge regarding alleged breach of procedure during the course of the review and investigation process (Section 5.20 of ST/SGB/2008/5; and, *Messenger*, 2011-UNAT-123).

5. The preliminary or preparatory steps in a process are not final administrative decisions. Only a final administrative decision taken at the conclusion of a process has direct legal consequences for a staff member's terms of appointment. In *Ishak*, 2011-UNAT-152, para. 29, a case involving a selection process, the Appeals Tribunal noted that "[a] selection process involves a series of steps or findings which lead to the administrative decision. These steps may be challenged only in the context of an appeal against the outcome of the selection process, but cannot alone be the subject of an appeal to the UNDT". In *Gehr*, UNDT/2012/103, para. 20 (affirmed by 2013-UNAT-313), the Appeals Tribunal confirmed this principle in the context of a rebuttal to a staff member's rating of his performance appraisal. In that case, the staff member's challenge to the Administration's proposal to replace a member of the rebuttal panel was found to be premature. This decision could only be challenged

once a final decision regarding the applicant's performance rating had been made at the conclusion of the rebuttal process.<sup>1</sup>

6. This principle also applies to preliminary steps taken during the formal process to address a complaint of prohibited conduct under ST/SGB/2008/5. The appointment of the Panel is one of a series of steps to be taken during the formal process. The next steps include the Panel's fact-finding investigation and preparation of its detailed report, on the basis of which the USG/OIOS will take one of several courses of action (see Sections 5.15 to 5.19 of ST/SGB/2008/5).

7. Lastly, a review of the rationale for the decision to establish the Panel and the appointment of the Panel members would involve the Dispute Tribunal in the Organization's procedures for addressing complaints against prohibited conduct. Should judicial review of each stage be permissible, formal procedures could be brought to a halt pending the completion of the judicial process, whether through suspension of action, or review at the first instance and appellate levels (*Hashimi*, Order No. 93 (NY/2011), para. 23). The delay caused by such interruption is not consistent with sound administration or judicial economy. For this reason, review of decisions taken under ST/SGB/2008/5 is limited to review of the procedure undertaken (Section 5.20 of ST/SGB/2008/5) at the conclusion of the process.

8. In the interests of justice and judicial economy, the Respondent requests that the receivability of the Application be dealt with as a preliminary matter (*Saka*, 2010-UNAT-075).

9. Should the Dispute Tribunal find the Application receivable, the Respondent submits the following on the merits.

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<sup>1</sup> See also *Elasoud*, UNDT/2010/211, para. 18 (affirmed by 2011-UNAT-173); *Balakrishnan*, UNDT/2012/041, para. 35; and *Gusarova*, UNDT/2013/072, para. 26. This principle has also been recognized by the Dispute Tribunal in rulings on a number of applications to suspend decisions to investigate staff members or to initiate a disciplinary process against staff members (see *Asswad*, Order No. 562 (GVA/2010); *Hashimi*, Order No. 93 (NY/2011); *Dudley*, Order No. 308 (NY/2010)).

### III. FACTS

10. On 20 December 2013, the Dispute Tribunal rendered judgment *Nguyen Kropp & Postica*, UNDT/2013/176, wherein the Dispute Tribunal found that Mr. Michael Dudley, Deputy Director, Investigations Division (ID), OIOS, had “admitted to altering and withholding evidence” (para. 140). This judgment is currently pending appeal before the Appeals Tribunal.

11. On 14 January 2014, Mr. Michael Dudley informed Mr. Michael Stefanovic, Director, ID/OIOS about a message he saw written on the whiteboard located in the entryway to the ID/OIOS office. The original message read “[i]f the facts don’t fit the theory [...] change the facts”. The text on the whiteboard was altered to: “[i]f the facts don’t fit the theory, change the PHOTOS” and attributed the message to “Michael Dudley”.<sup>2</sup> Mr. Stefanovic reported the matter to the USG/OIOS and sought out additional information from staff within ID/OIOS.

12. On 14 January 2014, Mr. Stefanovic met with the Applicant who admitted that he made the alterations to the text on the whiteboard (R/1). Mr. Stefanovic notified the USG/OIOS of his meeting with the Applicant and the Applicant’s reference to Dispute Tribunal judgement *Nguyen-Kropp & Postica*, UNDT/2013/176. Mr. Stefanovic stated that he would discuss the matter further with the Applicant’s supervisor, Mr. Dan Wilson, Senior Investigator, ID/OIOS, who was also copied on the communication.<sup>3</sup>

13. On 16 January 2014, Mr. Wilson submitted a memorandum to Mr. Stefanovic reporting alleged misconduct by the Applicant (R/2). The memorandum addressed issues Mr. Wilson has had with the Applicant concerning his conduct towards other colleagues, including confrontation with former supervisors. Mr. Wilson stated that as the Applicant’s supervisor, he had warned the Applicant about prior conduct that was

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<sup>2</sup> See para. 7.4 of Section VII to the Application.

<sup>3</sup> Mr. Wilson was copied on this email communication.

unprofessional, and that such conduct would not be tolerated within ID/OIOS. Mr. Wilson referred to a document signed by the Applicant on 19 November 2013, where the Applicant agreed to cease his inappropriate conduct towards staff within ID/OIOS (R/3). In this document, the Applicant took responsibility for deliberately and publicly embarrassing certain people in his office. The Applicant undertook “to refrain from saying anything provocative to anyone again”.

14. On 17 January 2014, Mr. Wilson requested a formal investigation into the Applicant’s actions concerning the whiteboard incident as a third party complainant under Section 5.11 of ST/SGB/2008/5 alleging harassment in the workplace (R/4). Mr. Wilson stressed that the whiteboard incident is one of several similar incidents in which the Applicant has confronted his supervisors with what can best be described as “inappropriate and/or impolite comments”. Mr. Wilson stated that although the whiteboard incident “could be considered minor in nature or the type of incident that could perhaps be resolved by less formal means, it nonetheless ignores all [his] previous initiatives to try and address [the Applicant’s] behaviour within the confines of performance management”. Mr. Wilson further stated that he considers the Applicant’s action in the whiteboard incident as misconduct (ST/AI/371) that requires a formal investigation pursuant to ST/SGB/2008/5.

15. On 21 January 2014, the Applicant wrote to Mr. Stefanovic seeking further information about the “preliminary investigation” he believed was underway against him. The Applicant admitted that he changed the text on the whiteboard and stated the following:

[f]or the avoidance of any doubt, my reference to ‘changing the photos’ referred to Michael Dudley having withheld and altered photographs which were supplied by a complainant in case 0052/09, and which he admitted having done on 20 May 2009, and was referred to in *Nguyen-Kropp & Postica*, UNDT/2013/176 (20 December 2009) at para. 36.

There is no doubt that the pertinent fact is in the public domain.

[...] I do not know who it was who originally wrote on the board. The quote was incorrectly attributed to Albert Einstein, and may well have been a subtle and indirect reference to the recent public disclosure about Michael Dudley. I simply clarified the point for the benefit of anyone who failed to grasp the subtlety of the original.

**I really must insist that the Organisation follows through with your preliminary enquiry [...].** Emphasis from original. (R/5)

16. On 24 January 2014, Mr. Stefanovic forwarded the Applicant's 21 January email to the USG/OIOS (R/5).

17. On 31 January 2014, the USG/OIOS informed the Applicant of Mr. Wilson's complaint pursuant to ST/SGB/2008/5 and her decision to appoint the Panel to conduct a fact-finding investigation in connection with Mr. Wilson's complaint.<sup>4</sup> The Applicant was informed that the Panel would be comprised of Mr. Yee Woo Guo, Deputy Director, Inspection and Evaluation Division, and Mr. William Petersen, former Director of OIOS Internal Audit Division.

18. On 4 February 2014, the Applicant requested management evaluation of the USG/OIOS's decision to establish a fact-finding panel pursuant to ST/SGB/2008/5.<sup>5</sup>

19. On 6 February 2014, the Applicant responded to the USG/OIOS' communication of 31 January, copying all OIOS staff members on his email and his formal response to the USG/OIOS. The Applicant stated that he was responding to what he considers to be the latest "manifestation of a long list of ridiculous and petty complaints made against me" and that he waives his right to confidentiality.<sup>6</sup> The same day, the USG/OIOS sent an email to all OIOS staff clarifying that the Panel had been constituted to investigate a complaint of prohibited conduct against the Applicant under ST/SGB/2008/5, and that contrary to the Applicant's assertions, Mr. Dudley is not the complainant.

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<sup>4</sup> Annex 2 to the Application.

<sup>5</sup> Annex 5 to the Application.

<sup>6</sup> Annexes 3 and 4 to the Application.

20. On 18 February 2014, the Applicant responded to the Panel's prior request to meet with him. In his response, the Applicant stated, inter alia, "[n]ot only have I freely admitted it was me who made the last (and 'offending') changes to the whiteboard in question, but I further invited the Organization to take the appropriate disciplinary action against me for it" (R/6). The Applicant requested that the Panel reconsider their involvement in the matter as he considers the process ridiculous and based on bad faith.

21. On 19 February 2014, the Panel emailed the Applicant suggesting an alternate date to meet with him (R/6). That same day, Mr. Yee informed the USG/OIOS that the Applicant visited him and advised him to "get out of it" for his own good and that the Applicant made a lynching motion with his hand and his neck. Mr. Yee stated that the Applicant told him that things would "go bad" for anyone involved with his case. Mr. Yee reiterated the panel's request to meet with him to which the Applicant stated something to the effect of "not to push it" and refused to respond to Mr. Yee concerning his availability to meet with the Panel.

22. On 10 March 2014, the Management Evaluation Unit (MEU) responded to the Applicant's request for management review and notified him that the USG/OIOS's decision to establish the Panel is not a final administrative decision subject to review. Since preliminary steps in the ST/SGB/2008/5 process cannot be appealed.<sup>7</sup>

23. On 20 March 2014, the Applicant filed the present Application before the Dispute Tribunal.

#### **IV. ARGUMENTS**

##### ***The USG/OIOS acted within her discretion***

24. Section 5.14 of ST/SGB/2008/5 provides that:

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<sup>7</sup> Annex 6 to the Application.



[u]pon receipt of a formal complaint or report, the responsible official will promptly review the complaint or report to assess whether it appears to have been made in good faith and whether there is sufficient grounds to warrant a formal fact-finding investigation.

25. The USG/OIOS followed the provisions of ST/SGB/2008/5 in her determination to establish the Panel. Her determination was taken within her discretionary authority (Section 5.14 of ST/SGB/2008/5). This decision was reasonable and lawful. Upon receipt of Mr. Wilson's third party complaint under Section 5.11 of ST/SGB/2008/5, the USG/OIOS assessed whether the complaint was made in good faith and whether there were sufficient grounds to warrant a formal fact-finding investigation.

26. The USG/OIOS's decision to refer the matter to a fact-finding panel was based on the following: (1) the Applicant acknowledged that he altered the whiteboard; (2) the Applicant admitted that the alteration was made with reference to matters concerned in *Nguyen-Kropp & Postica*, UNDT/2013/176; (3) the Applicant acknowledged that he believed disciplinary action should have been taken against Mr. Dudley for his alleged actions in the *Nguyen-Kropp & Postica* matter; (4) previous to this incident, Mr. Wilson warned the Applicant on numerous occasions not to confront his former supervisors or other colleagues; (5) the Applicant has ignored Mr. Wilson's instructions about not being confrontational; (6) the Applicant signed an agreement on 19 November 2013 where he undertook responsibility for "deliberately and publicly embarrassing certain people in [his] office and showing them the contempt which [he] believe[s] they deserve"; (7) Mr. Wilson informed the USG/OIOS that the whiteboard incident is not a minor incident; (8) Mr. Wilson stated that the Applicant has ignored his initiatives to attempt to limit these matters within the confines of performance management; (9) Mr. Wilson considers the Applicant's actions concerning the whiteboard incident as an act of misconduct; and, (10) Mr. Wilson requested a formal investigation under ST/SGB/2008/5. Based on the totality of the circumstances, the

USG/OIOS determined that Mr. Wilson's complaint was made in good faith and that there are sufficient grounds to warrant a formal fact-finding investigation.

27. Contrary to the Applicant's contention, the USG/OIOS has no conflict of interest in this matter. The Applicant's assumption that the USG/OIOS's actions indicate her intent to "protect Mr. Dudley" is without merit.<sup>8</sup> Importantly, the determination to institute a fact-finding panel was made in response to Mr. Wilson's third party complaint of alleged harassment by the Applicant against another ID/OIOS staff member. The determination was not made in response to a complaint made by Mr. Dudley. Furthermore, the determination was made based on all the information provided by Mr. Wilson detailed in the preceding paragraph.

28. The Applicant has failed to demonstrate, through clear and convincing evidence, that his rights have been violated by the decision to establish the Panel (*Bye*, UNDT/2009/083). The decision was reasonable and lawful.

### ***The Panel***

29. The Panel was duly appointed in accordance with the procedures established by ST/SGB/2008/5.

30. The appointment of a fact-finding panel is governed by section 5.15 of ST/SGB/2008/5. Where there are sufficient grounds to warrant a formal fact-finding investigation:

[...] the responsible office shall promptly appoint a panel of at least two individuals from the department, office or mission concerned who have been trained in investigating allegations of prohibited conduct or, if necessary, from the Office of Human Resources Management roster.

31. The Panel was formed in accordance with Sections 5.14 and 5.15 of ST/SGB/208/5. On 31 January 2014, the USG/OIOS notified the Applicant of the

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<sup>8</sup> See para. 8.2 (b) of Section VIII to the Application.

decision to appoint a fact-finding panel. The Panel was composed by Mr. Yee Woo Guo, Deputy Director, Inspection and Evaluation Division, and Mr. William Petersen, former Director of OIOS Internal Audit Division. Messrs. Yee and Petersen's work within OIOS and are trained in investigating allegations of prohibited conduct. Contrary to the Applicant's assertions, Messrs. Yee and Petersen have no conflict of interest in this matter.

32. The Applicant's assertion that Mr. Petersen is conflicted because he has a direct financial interest in having his contract renewed and that the renewal decision lies with the USG/OIOS as Mr. Petersen's Second Reporting Officer is without merit. The Applicant's assertion is based on unjustified and vexatious allegations that he has levelled against the USG/OIOS. There is no basis for alleging that the USG/OIOS would seek to unduly influence Mr. Petersen in his participation in the fact-finding panel.

33. The Applicant's claim concerning Mr. Yee's involvement, six years ago, in a staff survey, does not disqualify Mr. Yee from serving on the Panel. The staff survey was a general OIOS survey. The Applicant's claim that Mr. Dudley expressed dissatisfaction "with a number of anonymous respondents who had been critical of his poor leadership and his lack of integrity" is irrelevant and without merit.<sup>9</sup> Furthermore, had Mr. Dudley complained pursuant to ST/SGB/2008/5, Mr. Yee would not be conflicted from participating in the Panel. As with Mr. Petersen, the Applicant has failed to show that there is risk that the USG/OIOS would seek to influence Mr. Yee in the ST/SGB/2008/5 investigation.

## **V. Remedies**

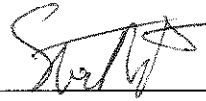
34. The Respondent opposes the Applicant's requested remedies. As established above, the decision was taken within the discretionary authority of the USG/OIOS. It was reasonable and lawful.

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<sup>9</sup> See para. 8.3 (h) to Section VIII to the Application.

**RELIEF**

35. In view of the foregoing, the Respondent requests the Dispute Tribunal to reject the Application.



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Stephen Margetts, ALS/OHRM



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Sarahi Lim Baró, ALS/OHRM

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**GALLO**

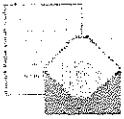
v.

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**R/1**

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**{In Archive} Whiteboard Incident(s)**

Michael Stefanovic To: Carman Louise Lapointe  
Cc: Dan Wilson

14/01/2014 06:10 PM

Archive: This message is being viewed in an archive.

Carman

I called Peter Gallo in (as Fatimohra saw him at the whiteboard earlier) and spoke to him regarding the whiteboard matter (below).

I advised him that I needed to speak to him re the whiteboard and he was full and frank in acknowledging that he made alterations to the text that had been there earlier. i.e "I'll make this simple - you got me!"

Peter advised

- (1) that when he arrived this morning the original text was "if the facts don't fit the theory ... change the facts.. Albert Einstein"
- (2) that sometime during the morning someone (not himself or anyone known to him) had altered the text by deleting "facts" and substituting it with "not the theory?"
- (3) that he had crossed out the addition " not the theory?" and added the words "PHOTO" and "Michael Dudley"

Peter expressed concern that I/you were spending any time on this and that if we felt it was that important we should charge him. I advised Peter that what he did was unwise and unhelpful and that he should refrain from anything that adds to the already difficult situation.

Peter said he would write an email providing a more complete response detailing what he did and contrasting it to the misconduct identified in the UNDT case to which he was an observer.

My view is that although what Peter did was clearly unwise, unhelpful and inflammatory the original quotation (unaltered) was also unwise and unhelpful as it too could easily have been referring to the UNDT decision. I'll discuss this tomorrow with Dan prior to our 11am meeting re PRU caseload.

Mick

Michael Stefanovic  
Director  
United Nations  
Office of Internal Oversight Services  
Investigations Division  
Rm IN-0731  
7th Floor 300 East 42nd (Cnr Second Avenue)  
New York, NY, 10017  
Tel: + 1 917 367-4963  
Fax: +1 212 963-7774



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R/2

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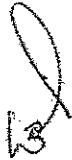
INTEROFFICE MEMORANDUM MEMORANDUM INTERIEUR

TO: Michael Stefanovic, Director  
A: Investigations Division  
Office of Internal Oversight Services:

DATE: 16 JANUARY 2014

REFERENCE:

THRU:  
FROM: Dan Wilson; Senior Investigator  
DE: OIC Proactive Investigations Unit  
ID/OIOS



SUBJECT: ID/OIOS Staff Member Peter Gallo  
OBJET: Alleged Misconduct

1. This report serves as a request for disciplinary proceedings against Peter Gallo, a P-4 level investigator reporting directly to me. It is being presented upon exhausting all other measures to address Mr. Gallo's conduct within the sphere of performance management.
2. The background of these matters include:
  - Mr. Gallo was assigned to my office in June 2013 following performance management issues with his previous supervisor. An e-PAS rebuttal and harassment in the workplace complaint (as initiated by Mr. Gallo against his former supervisors) are pending before the Management Evaluation Unit and assigned 2008/5 investigators.
  - In the months following his reassignment Mr. Gallo has confronted his former supervisors with what are best described as inappropriate and/or impolite comments. As his current supervisor I have taken steps to direct and warn Mr. Gallo as to how this type of conduct is unprofessional and that it will not be tolerated. These steps included a signed commitment from Mr. Gallo dated 19 November 2013 wherein he indicated such inappropriate conduct would cease forthwith.
  - As you are aware on 14 January 2014 Mr. Gallo altered comments on a white board by referencing one of his previous supervisors (Deputy Director Michael Dudley) in a negative fashion in correlation to the recent UNDT Judgment 2013-176.
  - Following his meeting with you Mr. Gallo attended my office and volunteered the same information.
3. My initial inquiries to date have identified the following witnesses:
  - Mia Kenney who had written the comments "*If the facts don't fit the theory, change the facts – Albert Einstein*" as a fun/motivational one-liner (something she had done/changed each day on the whiteboard as a means to lighten up the



office; that in no way were intended to reflect any of the findings outlined in UNDT 2013-176;)

- Fatimazohra Nouinou who observed Peter Gallo at the white board;
- Michael Dudley who after observing the amended comments referencing him removed the white board before submitting a complaint on the matter to the USG OIOS;
- Yourself who first raised this issue with Mr. Gallo and to whom he acknowledged responsibility for altering the comments on the white board; and
- Myself, including Mr. Gallo volunteering the same information to me and my previous efforts to curtail such activities.

4. While Mr. Gallo's most recent act could be considered minor in nature it nonetheless ignores all my previous initiatives to try and address his behaviour within the confines of performance management. In this regard I consider Mr. Gallo's most recent actions (the white board incident) an act of misconduct as defined by paragraph 2.2 (harassment) of SI/AI/371.

5. Thank you.

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R/3

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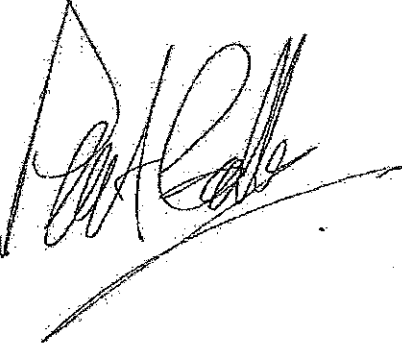
INTEROFFICE MEMORANDUM MEMORANDUM INTERIEUR

TO: Mr. Dan Wilson  
A: PRU  
OIOS/ID

DATE: 19 November 2013

REFERENCE: ID-

FROM: Peter A Gallo  
DE: OIOS/ID



SUBJECT: **On being confrontational**  
OBJET:

Dear Dan,

I appreciate that I have been responsible for deliberately and publicly embarrassing certain people in this office and showing them the contempt which I believe they deserve. I cannot and will not deny that.

This should not happen, of that I have no doubt, and in any normal world it wouldn't.

Be that as it may, I appreciate that this does not contribute towards any sort of harmony in the office, and if the USG is not going to consider it 'misconduct', there really is no point in it either.

Accordingly, you have my undertaking that I will endeavour to refrain from saying anything provocative to anyone again.

While this does not offer, sadly, give any guarantee that you will never have to deal with any further juvenile complaints against me, you do have my assurance I will not actively do anything to encourage them.

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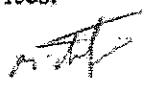
**R/4**


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INTEROFFICE MEMORANDUM MEMORANDUM INTERIEUR

TO: Ms. Carman L. Lapointe, Under-Secretary-General  
A: Office of Internal Oversight Services:

DATE: 17 JANUARY 2014  
REFERENCE:

THRU: Michael Stefanovic, Director   
Investigations Division  
Office of Internal Oversight Services

FROM: Dan Wilson, Senior Investigator   
DE: OIC Proactive Investigations Unit  
ID/OIOS

SUBJECT: ID/OIOS Staff Member Peter Gallo  
OBJET: Alleged Harassment in the Workplace

1. On 14 January 2014 the Director ID/OIOS informed me of an alleged harassment in the workplace matter that had been reported to him by Deputy Director Michael Dudley implicating one of my subordinates, Mr. Peter Gallo. While I am not aware as to how Mr. Dudley wishes to proceed on these matters I find myself compelled to request a formal investigation into these allegations as a third party complainant (paragraph 5.11 ST/SGB/2008/5 refers.)
2. The background of this most recent incident includes:
  - Mr. Gallo was assigned to my office in June 2013 following performance management issues with his previous supervisor. An e-PAS rebuttal and harassment in the workplace complaint (as initiated by Mr. Gallo against his former supervisors) are pending before the Management Evaluation Unit and assigned 2008/5 investigators.
  - In the months following his reassignment Mr. Gallo has on occasion confronted his former supervisors with what are best described as inappropriate and/or impolite comments. As his current supervisor I have taken steps to direct and warn Mr. Gallo as to how this type of conduct is unprofessional and that it will not be tolerated. These steps included a signed commitment from Mr. Gallo dated 19 November 2013 wherein he indicated such inappropriate conduct would cease forthwith.
  - As the Director ID/OIOS had advised me, on 14 January 2014 Mr. Gallo acknowledged that he had altered comments on a white board by referencing Deputy Director Dudley in a negative fashion in correlation to the recent UNDT Judgment 2013-176.
  - Following his meeting with the Director ID/OIOS Mr. Gallo attended my office and volunteered the same information.
3. My initial inquiries to date have identified the following witnesses:

- I spoke briefly to Mia Kenney as I believed she had written the originating comments on the white board. The comments were "*If the facts don't fit the theory, change the facts – Albert Einstein.*" Ms Kenney advised she had only put the comments up as a fun/motivational one-liner; something she had done/changed each day on the whiteboard as a means to lighten up the office; and that in no way were intended to reflect any of the findings outlined in UNDT 2013-176. Ms. Kenney even commented that she has not even read the noted decision;
- Ms. Fatimazohra Nouinou who observed Peter Gallo at the white board;
- Deputy Director Dudley who after observing the amended comments took the white board into his possession before forwarding his concerns to the Director ID/OIOS;
- Mr. Michael Stefanovic (Director ID/OIOS) who first raised this issue with Mr. Gallo and to whom he acknowledged responsibility for altering the comments on the white board; and
- Myself; with Mr. Gallo subsequently volunteering the same information to me (and my previous efforts to curtail such acts.)

4. While Mr. Gallo's most recent act could be considered minor in nature and/or the type of incident that could perhaps be resolved by less formal means; it nonetheless ignores all my previous initiatives to try and address his behaviour within the confines of performance management. In this regard I consider Mr. Gallo's most recent actions (the white board incident) an act of misconduct as defined by paragraph 2.2 (harassment) of ST/AI/371 that requires formal investigation in accordance with the provisions outlined in ST/SGB/2008/5.

5. Thank you.

cc: Ms. Catherine Pollard, Assistant Secretary-General  
Office of Human Resources Management

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**R/5**

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**{In Archive} Serious Misconduct on Whiteboards**

Peter Gallo to: Michael Stefanovic

Cc: Dan Wilson

21/01/2014 10:56 AM

History: This message has been forwarded.  
Archive: This message is being viewed in an archive.

Dear Mick,

You called me in to your office on Tuesday this week, 14 January 2014, under the instructions of the USG to conduct some sort of preliminary fact-finding enquiry - which I am presuming to have been a 'preliminary investigation' under ST/AI/371, Section II - to establish whether or not I was involved in "an incident" involving a whiteboard.

I was.

For the avoidance of any doubt, my reference to "*changing the photos*" referred to Michael Dudley having withheld and altered photographs which were supplied by a complainant in case 0052/09, and which he admitted having done on 20 May 2009, and was referred to in Nguyen-Kropp & Postica, UNDT/2013/176 (20 December 2012) at para 36.

There is no doubt this pertinent fact is in the public domain.

It has also been reported in the Washington Post and an unknown number of other newspapers around the world recently.

I do not know who it was who originally wrote on the board. The quote was incorrectly attributed to Albert Einstein, and may well have been a subtle and indirect reference to the recent public disclosures about Michael Dudley. I simply clarified the point for the benefit of anyone who failed to grasp the subtlety of the original.

Somewhere along the line, A/RES/48/218 B appears to have been replaced with the script from The Monty Python Theatre Company production of the Salem Witch Trials. I never got the memo. This office is drowning in an inordinate amount of what, in the real world, one alludes to as bovine fecal matter. I am not sure of the correct term in this office. It may be '*proper procedure*'.

Still, having identified me as the person responsible for this heinous act of sedition by whiteboard, **I really must insist that the Organisation follows through with your preliminary enquiry and I do wish to be charged with something suitably serious.**

I am most anxious that this be viewed as disciplinary. Quite frankly, the old excuse of sidelining everything scandalous as a 'performance issue' is getting a bit stale.

Misuse of a non-permanent marker on a whiteboard seems to be as good a holding charge as any, but following on from their truly excellent "quality review" work, perhaps PPS could consider



that non-permanent whiteboard markers may be carcinogenic; so that should ought to open up all manner of criminal offences under the Chemical Weapons Convention and even introduce the possibility of bio-terrorism.

One can only regret the abolition of corporal punishment. There was a time when political satire was punishable by a public flogging. Indeed, I am told that in some places, it still is. I was under the impression that the UN was not, as an organisation, generally in favour of such a policy but of course I could well be mistaken.

Alternatively, if this is NOT to be pursued, **can you please explain - for the benefit of the whole Division - the purpose of the USG's instructions to you?**

Whilst I do insist on this being pressed to its ultimate conclusion, it must of course take its place in the queue.

Proper procedure cuts both ways.

I am still waiting to hear the explanations for a great many things, not least of which are why, if I merited a complaint for "*failure to show enough respect*" on some unspecified date in July, there was a three week delay until Dan Wilson to come back from leave before anything was said, or how my failure to have copied someone on an e-mail on 2 October 2013 was somehow a violation of a Protocol which says absolutely nothing about forwarding e-mails.

**More importantly, I would also like to have a copy of the photograph of the whiteboard.**

I need it as evidence of the ongoing harassment in the form of a series of ridiculously petty and unsubstantiated complaints made about me to the USG - for patently retaliatory purposes - since 14 March 2013, and which is the subject of a slowly ongoing investigation.

In that regard, may I say how delighted I am to have finally achieved my goal of having some ridiculous complaint against me taken seriously. I look forward to meeting the ICTY investigator who is selected this time, and will ask for the entire process to be held in public; if only because "The Wiggles" may be interested in setting it all to music.

We are, after all, truly in a Kafkaesque realm of the ridiculous.

Peter Gallo

Investigator  
Investigations Division  
Office of Internal Oversight Services  
Ph: 1-917-367-4265

**UNITED NATIONS DISPUTE TRIBUNAL**

**Case No.: UNDT/NY/2014/017**

**GALLO**

**v.**

**THE SECRETARY-GENERAL OF THE UNITED NATIONS**

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**R/6**

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**Fw: \*Confidential: Fw: Appointment of a Fact-Finding Panel to investigate a complaint of prohibited conduct under ST.SGB.2008.5 lodged against you**

Yee Woo Guo to: Carman Louise Lapointe  
Cc: "William Petersen"

19/02/2014 01:06 PM

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History: This message has been forwarded.

FYI Below.

Following on this, Mr Gallo came into my office at 1:00pm to advise me to "get out of it" for my own good. He then made a lynching motion with his hand and his neck. He then said some other things to effect of how it would go bad for anyone involved with this case. I did not interpret his words and actions to be necessarily a threat against me per se, but that the matter would bode ill for all involved, and that I should get out of it while I can. I reiterated my request for the Monday interview, and he said not to push it and did not respond to my request. He then left the room.

— Forwarded by Yee Woo Guo/NY/UNO on 19/02/2014 01:00 PM —

From: Yee Woo Guo/NY/UNO  
To: Peter Gallo/NY/UNO@UNHQ,  
Cc: "William Petersen" <petersenw48@gmail.com>  
Date: 19/02/2014 12:44 PM  
Subject: \*Confidential: Fw: Appointment of a Fact-Finding Panel to investigate a complaint of prohibited conduct under ST.SGB.2008.5 lodged against you

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Dear Mr Gallo,

Thank you for the below.

As requested, we would like to reschedule the interview for Monday 24th February at 2pm, in the IED Conference room (on 7th Floor IN Building).

Please advise if you are available then. If not, would appreciate if you could please suggest an alternative time next week.

Thank you,

(Eddie) Yee Woo Guo  
OIOS-IED  
Phone: (917) 367-3674 / Fax: (212) 963-9427

Please consider the environment before printing this e-mail.

Peter Gallo

Gentlemen,

18/02/2014 01:15:49 PM

From: Peter Gallo/NY/UNO  
To: Yee Woo Guo/NY/UNO@UNHQ, "William Petersen" <petersenw48@gmail.com>,  
Date: 18/02/2014 01:15 PM  
Subject: Re: \*Confidential: Fw: Appointment of a Fact-Finding Panel to investigate a complaint of prohibited conduct under ST.SGB.2008.5 lodged against you

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Gentlemen,

I was informed of your appointment to this panel by the USG's letter dated 31 January 2014 under reference OUSG-14-00067.

Ms. Lapointe refers to a complaint of something that is alleged to be "prohibited conduct", which was actually my use of a non-permanent marker to make a satirical editorial change to a pre-existing false statement on a whiteboard, clarifying it to be a reference to information in the public domain about Michael Dudley, whose actions in changing photographs was reported extensively in UNDT/2013/176.

I assume you have been provided with the photograph of this serious threat to civilisation as we know it, so there is no need for me to recite the actual text of my graffiti.

Not only have I freely admitted it was me who made the last (and "offending") changes to the whiteboard in question, but I further invited the Organisation to take the appropriate disciplinary action against me for it.

Afterwards, amidst some hilarity at the childishness of it all, I informed Dan Wilson that it had happened. He did not know about the whiteboard until after it had been removed and a complaint made to the USG.

Given that the management policy of OIOS/ID is patently the descent into the realm of the ridiculous, I had no hesitation in publicising the USG's decision.

In any event, this satirical act of changing a few words on a whiteboard took place on Tuesday 14 January, and I was interviewed by the Director OIOS/ID on that same day, 14 January.

With regard to the USG's notice advising me that I was to be investigated for this, the USG is on record as having told all staff members "*That notice included the name of the complainant, and it was NOT Mr. Michael Dudley.*" (See the email from the USG which you received on 6 February at 2:11 pm.)

There was never any doubt as to who wrote the letter of 17 January, I know it was Dan Wilson. He told me that he had done so and it is clear from the USG's letter; but there lies the first legal problem in this fiasco. The USG received a complaint about the incident on 14 January. She issued an instruction to the Director/ID on 14 January to speak to me about it, and the Director duly did that.

If this was a complaint under ST/SGB/2008/5, my meeting with the Director/ID on 14 January constituted a "*prompt review the complaint or report to assess whether it appears to have been made in good faith and whether there are sufficient grounds to warrant a formal fact-finding investigation*" - exactly as per ST/SGB/2008/5 para 5.14.

You are the panel duly constituted under the second sentence of that same section.

This is interesting because the "prompt review" in this case was in fact so prompt that it was completed three days before the complaint was even received.

Somebody made a complaint to the USG on 14 January and it was NOT Dan Wilson. I am prepared to make an educated guess here and suggest that that person was Michael Dudley. He was, after all, the "aggrieved party" described in ST/SGB/2008/5 para 5.11 and the only person even capable of determining that he had been harassed.

There is something very wrong with the USG's feverish attempt to assure all OIOS staff that the complainant was not Michael Dudley.

I believe the facts of the matter here include:

- 1) The person who made the complaint on 14 January 2014 was Michael Dudley.

- 2) The act being described as "prohibited conduct" was a reference to serious misconduct by Michael Dudley, which:
  - a) he admitted on 20 May 2009;
  - b) was included in the findings of fact by Judge Meeran in Nguyen-Kropp & Postica, UNDT/2013/176 (20 December 2013);
  - c) was extensively reported in the media worldwide after being featured in an Associated Press news story on 10 January 2014 and remains available on over 55 websites as at today's date;
  - d) is so "widely known" in the office that staff of the OIOS/ID Professional Practices Section confirmed there was no need for it to be brought to anyone's attention;
  - e) has never been the subject of any disciplinary action and
  - f) constitutes freedom of expression on a subject in which I (*and all OIOS staff members, including yourself*) have a direct personal interest and is protected under Article 19 of the Universal Declaration of Human Rights.
- 3) The USG was herself involved in perpetrating the retaliation against Ms. Nguyen-Kropp and Mr. Postica. This was disclosed in the hearing, which was open to the public, and is noted in the published judgment of UNDT/2013/176.
- 4) The USG's misleading attempt to distance Michael Dudley from this complaint is a further example of the protection which he continues to receive from management of the Organisation which is to the detriment of all OIOS staff members worldwide, and was the primary reason for my open letter of 6 February 2014.
- 5) In a patent example of a self-fulfilling argument, the USG's misleading response to my open letter, which was her email of 6 February 2014 at 2:11 pm, provides incontrovertible proof of the very substance of the complaint contained in my open letter.
- 6) Your panel was improperly constituted and your appointments therefore invalid, because the procedure outlined in ST/SGB/2008/5 para 5.14 was not followed;
  - a) the "review" was carried out on 14 January 2014, and followed a complaint received from Michael Dudley on that day. It did not follow the subsequent letter from Dan Wilson on 17 January;
  - b) the complaint from Michael Dudley on 14 January was not made in good faith, and
  - c) there were no sufficient grounds to warrant a formal fact-finding investigation because the alleged "*prohibited conduct*" does not meet the definition of "*harassment*" under ST/SGB/2008/5 para 1.2.
- 7) Given (i) the triviality of the alleged misconduct, (ii) the financial cost to the organisation and (iii) the decision being for the clear personal benefit for Michael Dudley rather than for the United Nations, the decision to establish a panel was not a decision made in the best interests of the Organization. For that reason, your appointment constitutes a violation of Staff Regulation 1.2 (c) and the Declaration.
- 8) Moreover, the USG's decision to establish the Panel was not made in good faith. That decision is the latest in a long series of retaliatory actions and complaints made against me following the USG's failure to take the appropriate "*prompt and concrete action*" in response to a report (by me) under ST/SGB/2008/5 containing allegations of prohibited conduct on the part of Michael Dudley and others on 11 March 2013. Moreover, in addition to the failure to take the appropriate action on that report, the already hostile situation was aggravated and clear bias was shown, by:
  - a) The USG giving credibility to an unfounded rumour to the effect that my complaint of 11 March 2013 had been incited by Mr Florin Postica, (the second named Applicant in UNDT/2013/176), and
  - b) The USG taking an active role in supporting the very parties against whom the complaint had been made, in perpetrating the very matter that had formed the basis of the complaint.
- 9) The decision by the USG to establish a panel itself constitutes an abuse of authority, and that actually is an act of "*prohibited conduct*" as defined by section 1.5 of the Bulletin;

In view of the foregoing, and having been made aware of this information, I wish to give you the

opportunity to reconsider your position as regards serving on this panel on the grounds that you both report to the USG and will have a conflict of interests if you proceed.

In order not to create the appearance of pressure, I propose to suggest that I shall not be available on Wednesday 19 February as proposed, and seek a postponement.

The reason for this is that I believe I may be required to attend yet another ridiculous interview, in relation to a more serious, if even more bizarre and far-fetched complaint against me. This one was made not by Michael Dudley but by two of the *other* persons named in my original complaint of 11 March 2013 and against whom the USG failed to take any action.

This postponement will, I trust, give you adequate time to either recuse yourselves from serving on this panel, or to take independent legal advice on avoiding liability yourselves should you elect to proceed.

In the meantime, if you care to let me have the photograph taken of the offending text, I will give you a signed confirmation that it was me who wrote it.

Rgds

P

Peter Gallo  
Investigator  
Investigations Division  
Office of Internal Oversight Services  
Ph: 1-917-367-4265

Yee Woo Guo

Dear Mr Gallo, Further to the below, we (Mr Pet...

13/02/2014 01:59:53 PM