

United Nations  Nations Unies

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REFERENCE: MEU/071-14/R (AS)

10 March 2014

**CONFIDENTIAL**

Dear Mr. Gallo,

Your request for management evaluation dated 4 February 2014 and addressed to the Management Evaluation Unit (MEU), requesting management evaluation of the decision of Under-Secretary-General, Office of Internal Oversight Services (“OIOS”) to establish a fact-finding panel pursuant to ST/SGB/2008/5, in order to investigate a potential case of “discrimination”, “harassment”, or “abuse of authority”, was received in our office on 5 February 2014. You submitted further documentation to the MEU on 7 February 2014.

Following a preliminary review of your case, the MEU has determined that your request for management evaluation is not receivable as there has not yet been an administrative decision which may be subject to management evaluation.

Staff Rule 11.2 provides:

*i.e. the management decision to appoint a panel is not a “decision” as defined by the Department of Management.*

*“A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.”*

The MEU noted that both the United Nations Dispute Tribunal (UNDT) and the United Nations Appeals Tribunal (UNAT) have adopted the definition of an “administrative decision” by the former United Nations Administrative Tribunal (UNAdT) as:

*“a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order.” (See, e.g., Hamad, 2012-UNAT-269; Planas, UNDT/2009/086, affirmed by 2010-UNAT-049).*

The MEU further noted that both the UNDT and the UNAT have consistently held that only final administrative decisions, and not preparatory acts in advance of final decisions, may be contested. (See, e.g., Ishak, 2011-UNAT-152; Elasoud, UNDT/2010/111, affirmed by 2011-UNAT-173; Bajnoci, UNDT/2012/028).

Mr. Peter Anthony Gallo  
gallop@un.org

The MEU noted that Section 5.14 of the ST/SGB/2008/5 provides that,

*“Upon 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 are sufficient grounds to warrant a formal fact-finding investigation. If that is the case, 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.”*

The MEU further noted that, in relation to formal procedures and the role of the Fact Finding Panel specifically, Sections 5.16 – 5.18 of ST/SGB/2008/5 provide that the officials appointed to conduct the fact-finding investigation shall prepare a detailed report and submit this report to the responsible official who shall take one of the actions specified in Section 5.18. Section 5.20 provides:

*“Where an aggrieved individual or alleged offender has grounds to believe that the procedure followed in respect of the allegations of prohibited conduct was improper, he or she may appeal pursuant to chapter XI of the Staff Rules.”*

The MEU had regard in particular to the judgment in *Nwuke*, 2010-UNAT-099, wherein the UNAT stated:

*“In light of ST/SGB/2008/5, Chapter XI of the Staff Rules, and the UNDT Statute, the Appeals Tribunal concludes that when the claims regard issues covered by ST/SGB/2008/5, the staff member is entitled to certain administrative procedures. If he or she is dissatisfied **with their outcome**, he or she may request judicial review of the administrative decisions taken.”* (Emphasis added).

The MEU further noted that the UNDT has held that the preliminary investigation phase is closed with the taking of action by the responsible official pursuant to Section 5.18 of ST/SGB/2008/5 and that staff members may seek management evaluation with respect to procedural matters as of notification of the action to be taken. (*Featherstone*, **UNDT/2012/203**). *That was very nice..... but a UNDT judgement is not BINDING*

The MEU considered that in the circumstances of your case, the preliminary investigative phase is ongoing and that the administrative procedures set out in ST/SGB/2008/5 have not yet reached an outcome in terms of a decision by the responsible official to take one of the courses of action specified in Section 5.18 therein. The MEU considered that, on the basis of the above-cited jurisprudence, your request for management evaluation is premature and therefore not receivable.

*Under the ‘stare decisis’ doctrine, a single judge cannot bind another judge..*

*Yes.... but what if the administrative procedure is predicated on a decision that is totally NUTS?*

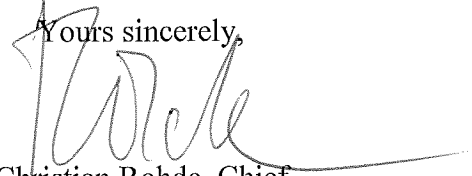
*What does the MEU do if a decision is so patently ridiculous that no reasonable manager, (acting reasonably) could ever be justified in making that decision?*

*The answer is that the MEU does not actually EVALUATE the MERITS of the decision, no matter how untenable it may be.*

*The MEU serves no useful purpose with regard to any qualitative assessment of the decision.*

We regret that we are not in a position to assist you further.

Yours sincerely,



Christian Rohde, Chief  
Management Evaluation Unit  
Office of the Under-Secretary-General  
for Management

cc: Ms. C. Lapointe  
Mr. M. Stefanovic  
Mr. C. Saunders

*So, let us assume that a staff member actually KNOWS IN ADVANCE that the MEU will dismiss the evaluation request?*

*That doesn't matter - the only purpose of any management evaluation request (no matter how pointless it may be) is because the UN Dispute Tribunal will automatically dismiss any application (regardless of its merits) if it has not first been referred to the MEU.*

*The MEU may be of only marginal benefit but it keeps people in work and it helps generate paperwork; so the UN considers it worth keeping!*

