

REFERENCE: MEU/104-15/R [NV]

10 March 2015

CONFIDENTIAL

Dear Mr. Gallo,

Pursuant to Staff Rule 11.2, the Secretary-General has reviewed your request for a management evaluation (“MER”) dated 9 February 2015 and addressed to the Management Evaluation Unit (“MEU”), requesting management evaluation of the decision concerning your physical reassignment to a location outside the Investigations Division (“ID”), Office of Internal Oversight Services (“OIOS”).

Non-Receiptability

Following a review of your submission, the MEU determined that your request is not receivable because it does not comply with the deadlines for filing management evaluation requests set out in Staff Rule 11.2(c). The MEU noted that Staff Rule 11.2 (c) requires staff members who wish to contest an administrative decision to submit a request for management evaluation within sixty (60) calendar days from the date on which s/he received notification of the contested decision.....the contested decision being...

The MEU observed that you were informed of the decision to relocate you to another work station in an email from Mr. Dan Wilson, Officer-in-Charge, New York Operations and Pro-Active Investigations Unit, on 5 November 2014. Specifically, you were informed that there had been another complaint of alleged prohibited conduct initiated against you, and that in light of this complaint and what OIOS management (“management”) felt was a “pattern of inappropriate behaviour on your part”, you were given the option to work from home full time or to be relocated to a work space within the UN offices, in this case in the Internal Audit Division (“IAD”), located one floor below where you were located. You were not assigned any new duties, and you retained the same reporting lines and duties

You chose to work from home. You were also advised that the relocation was a temporary provision and would be re-assessed by management upon completion of formal procedures under ST/SGB/2008/5 and/or any other administrative reviews stemming from the alleged incidents.

On 5 February 2015, you were informed by Ms. Carman Lapointe, Under-Secretary-General, OIOS (“USG/OIOS”) that she had decided not to convene a panel to investigate the most recent complaint against you, as she considered it to be a continuation of a pattern of behavior which had already been addressed in a previous complaint, in relation to which a panel had been convened and a report issued. Mr. Wilson wrote to you on the following day, informing you that the decision to offer you alternative office space within the United Nations was still in place. Mr. Wilson indicated that he could see if the IAD space was still available, and if not, he would try to find another location.

This was a request for evaluation of a decision NOT TO ALLOW ME TO RETURN to the office, after I had NOT been investigated which was communicated to me on

“Options” which were illegal as they were made without any legal authority..... but let’s not worry about that.

? No, I was actually FORCED to do that. I did not “agree” and would not sign the Telecommuting Agreement because ST/SGB/2003/4 states clearly that any such agreement must be purely voluntary.

So why was ST/SGB/2008/5 not followed?

...and WHAT, exactly, does that include?

OK.... so WHEN were these “formal procedures” completed?Never!

The MEU ignore that bit

... and what is the requirement upon receipt of a complaint under ST/SGB/2008/5?

It was not followed!

Mr. Peter A. Gallo, OIOS
gallop@un.org

The MEU considered the definition of an “administrative decision” articulated by the former United Nations Administrative Tribunal (“UNAdT”) in *Andronov*, Judgment No. 1157 (2003) and confirmed by the United Nations Appeals Tribunal (“UNAT”) and the United Nations Dispute Tribunal (“UNDT”), 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. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences.”

What constitutes an “administrative decision”?

The MEU does not consider that having a disguised disciplinary measure imposed for something which has NOT been investigated constitutes “direct legal consequences”

The MEU further noted that, drawing on this precedent, in *Planas*, UNDT/2009/086, the UNDT held that an administrative decision can only be considered as such if, *inter alia*, it has “direct legal consequences (effects) on an individual’s rights and obligations.” This was further confirmed in the holding of the UNAT in *Andati-Anwayi*, 2010-UNAT-058 and in *Nwuke*, 2010-UNAT-099, to the effect that whether a contested decision amounts to an administrative decision is determined by, *inter alia*, whether the contested administrative decision affects a staff member’s rights directly.

What are “direct legal consequences”?

The MEU considered that you were informed of the decision to relocate you outside the ID on 5 November 2014, and that the decision to relocate you at that time was the operative administrative decision directly affecting your rights in this case. The MEU noted that this decision clearly referenced another complaint against you. You filed your management evaluation request on 9 February 2015, approximately three months later.

That's strange, because when I asked for evaluation of the original decision to appoint the panel, the MEU said that was “not receivable” because it was only a “preliminary step”.....

The 5 February 2015 communication from Ms. Lapointe advised you that no investigation would be conducted into the most recent complaint. However, it was clear that the alleged pattern of conduct in question that led to your relocation was still under review. The MEU was therefore of the view that there was no new or revised administrative decision taken regarding your physical relocation in February 2015. On your MER form (page 2), you yourself acknowledged that the communication of 6 February 2015 was a “decision to continue to deny [you] access to the office.”

Yes! And THAT is what I wanted the MEU to consider

Thus, your MER was filed outside the time frame applicable under the Staff Rules. As a result, the MEU considered that your challenge to this decision is time-barred pursuant to Staff Rule 11.2(c). i.e.: within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.

a.k.a. “moving the goal-posts”?

The MEU further considered that contrary to your submission, you were not “denied access to the work place” or the right to work. You were given the option of working in a UN office, in this instance, one located one floor below where your previous office was located. In your new location, you retained access to your working files. In relation to these factors, the MEU observed that you did not specify precisely which individual right

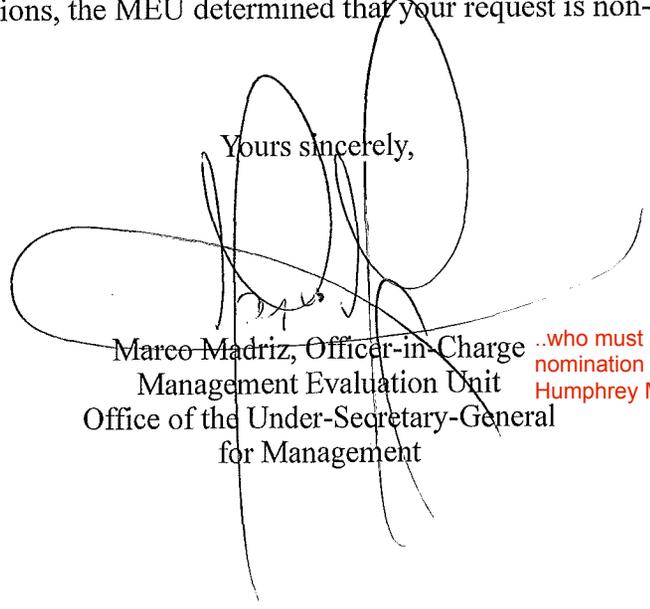
Disguised disciplinary measure.

The alleged “harassment” here involved sending an e-mail. The MEU do not explain how moving me to the 6th floor or forcing me to work from home could have any bearing on the alleged misconduct if I still retained access to the e-mail.

under the Staff Rules and Regulations and the administrative issuances has been infringed in your case.

In light of the foregoing considerations, the MEU determined that your request is non-receivable.

Yours sincerely,



Marco Madriz, Officer-in-Charge
Management Evaluation Unit
Office of the Under-Secretary-General
for Management

..who must at least deserve a nomination for the Sir Humphrey Memorial Award...

cc: Ms. C. Lapointe
Mr. C. Saunders
Mr. D. Wilson