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EXECUTIVE OFFICE OF THE SECRETARY-GENERAL  
CABINET DU SECRETAIRE GENERAL

CONFIDENTIAL

REFERENCE: MEU/250-14/R [NV]

25 July 2014

30 days?

No.

65 days!

Dear Mr. Gallo,

Pursuant to Staff Rule 11.2, the Secretary-General has reviewed your request, dated 15 May 2014, for a management evaluation of the decision of the Under-Secretary-General for Management to close your case following a panel's fact-finding investigation concerning your allegations of harassment and abuse of authority against four staff members of the Office of Internal Oversight Services (OIOS).

The review process included a determination of the facts of the case and the application of relevant law to these facts. The facts of the case were set out in your correspondence addressed to the Management Evaluation Unit (MEU) and dated 15 May 2014, and in the report of the fact-finding investigation panel.

Based on the management evaluation, as detailed below, the Secretary-General decided to uphold the contested decision.

**Summary of Relevant Facts**

dated 11 March 2013 ...which was never provided to the Fact Finding Panel before they interviewed me!

You are an Investigator at the P-4, Step 9 level, and you work for OIOS. You joined the United Nations on 17 March 2011. On 11 March 2013, you submitted a complaint to the Director, OIOS Investigations Division, against four OIOS staff members - Mr. Vladimir Dzuro, Investigator and your first reporting officer (FRO) at the time; Ms. Roberta Baldini, Senior Investigator and your second reporting officer (SRO) at the time; Mr. Michael Dudley, Deputy Director; and Ms. Sophia Richter, Administrative Officer - alleging harassment and abuse of authority. Your complaint arose out of an attempt to implement a Performance Improvement Plan (PIP) pursuant to ST/AI/2010/5. In correspondence dated 23 July 2013, to which you attached a document entitled, "Statement of Complaint by Peter Anthony Gallo to Secretary-General 22 July 2013", you forwarded your complaint to the Secretary-General. On 30 July 2013, you were informed that your complaint was being referred to the Department of Management.

Bear in mind that the Management Evaluation Unit reports directly to the Under-Secretary-General for Management; so the chances of the MEU ever making a finding against their own USG is "slim" at best.....

The UN likes to fill up a lot of space unnecessarily repeating the issue.....

....just in case anyone forgets why they wrote in the first place.

Yes. It was sent to the Secretary-General because the USG/OIOS (Carman Lapointe) just decided there was nothing wrong so she didn't need to bother investigating it....

Mr. Peter Anthony Gallo  
Office of Internal Oversight Services (OIOS)  
[gallop@un.org](mailto:gallop@un.org)

Hooray! The Department of Management waited over **THREE MONTHS** before they even started looking into it.

Investigations into these complaints are supposed to be completed within 90 days, but the regulations do not require the investigation to actually start promptly....

Pursuant to ST/SGB/2008/5, a fact-finding panel was appointed by the Department of Management on 8 November 2013 to investigate the alleged misconduct. The panel was convened on 13 November 2013, and it presented its findings on 27 January 2014. And on that date, I wrote to the panel to clarify their terms of reference...

A "summary"?

It was 5 bullet points, only 3 of which were "findings" and all it said was that all the subjects were cleared of any wrongdoing.

Then they criticised me for being "inappropriate"...

On 6 February 2014, the Under-Secretary-General for Management provided you with a summary of the findings of the investigation. He informed you that following his review of the panel's report and its findings - namely, no prohibited conduct took place, and your allegations were not made with malicious intent - he had decided to close the case.

... and the panel members then gave certain undertakings which they then failed to carry through.

On 6 March 2014, you wrote to the Under-Secretary-General for Management, requesting reconsideration of the decision to close the case and seeking a copy of the full investigation report. ...also explaining why the "investigation" was incomplete and that the panel had misled a material witness.

On 6 May 2014, the Under-Secretary-General for Management informed you that your case remains closed.

You submitted a request for management evaluation of this decision on 15 May 2014. This was because the Respondent tried to have the UNDT application dismissed because I had failed to first send the matter to the MEU for them to "evaluate" a decision by their own boss in respect of something that was not a "disciplinary" decision because the decision NOT to discipline someone is NOT considered "disciplinary" decision.

### *Your arguments*

In your request before the MEU, you submitted that your right to have a complaint under ST/SGB/2008/5 investigated fully and fairly, and to appeal the same to the United Nations Dispute Tribunal (UNDT), was violated. You made no specific arguments before the MEU regarding your claim, but attached your correspondence to the Under-Secretary-General for Management dated 6 March 2014.

Yes..... because all the arguments were listed in that memo of 6 March

### *Management Evaluation*

Yes, this is a repetition of the previous oparagraph...

At the outset, the MEU observed that your MER did not contain specific arguments. However, the MEU reviewed correspondence from you to the Under-Secretary-General for Management, dated 6 March 2014, which you attached to your MER. You made a number of claims in this correspondence, seeking a reversal of the decision to close your case. Each of these claims will be considered in turn.

Did I make a mistake in assuming that staff of the MEU should be able to READ the attachments?

Your claim that the Executive Office of the Secretary-General (EOSG) was not informed of the outcome of your complaint

They sent the report to Carman Lapointe.....

She was supposed to be one of the SUBJECTS of the investigation.

The panel failed to look into her failure to investigate the original complaint!

The MEU was of the opinion that this claim was not relevant to your request. The MEU also noted that in the second memorandum from the Under-Secretary-General for Management to you, dated 6 May 2014, wherein he referred to his previous memorandum of 6 February 2014 which set out a summary of the findings and the conclusion of the investigation, and wherein he reiterated that your case remains closed, Mr. Patrick Carey of the EOSG was copied.

Did Takasu read my memo to the panel members on the subject of their Terms of Reference?

Your claim that the panel appeared to have failed to consider the partisan handling by the USG/OIOS of your 11 March 2013 complaint, and any of the harassment that continued

Wait a minute.....

The Complaint was sent to the Secretary-General BECAUSE Lapointe failed to act on it.

The "summary" acknowledged that my complaint had been made IN GOOD FAITH.

If the complaint was made in goof faith, Lapointe had failed to comply with the terms of ST/SGB/2008/5 when she failed to form a panel.....

The MEU took the view that your claims in this regard were unsubstantiated and therefore could not be considered further. In particular, you stated that since you transmitted your claim to the Secretary-General, "more relevant information about the actions of Ms. Carman Lapointe had become known to [you] and should be considered[,] and that "this would clearly have been material to the question of ongoing harassment..."

Lapointe was involved in the retaliation against Nguyen-Kropp & Postica. Why was she interested in whether Postica had been involved in my complaint?

However, you submitted no evidence to support your claim, which remained a bald allegation. The burden was on you to substantiate your claim. See Bye, UNDT/2009/083 (referring to "a well-known maxim of law that the party who alleges a fact bears in principle the burden of proving its veracity"); Seyidova, UNDT/2012/168; Rolland, 2011-UNAT-122.

because I wasn't asked!

The panel members did not even have a copy of the original complaint they were supposed to investigate!

Your claim that the panel was unprepared for your interview, ran out of time, and did not recall you for a further interview, denying you the opportunity to suggest further witnesses

Its a pity nobody ever asked me if I had an audio recording of that interview....

The MEU considered that these claims were unsubstantiated or unsupported by the facts, and could not be considered further. You claimed that the panel was unable to conduct a meaningful or balanced interview, but you did not specify in what way the conduct of the interview was deficient.

Translation: The MEU cannot consider the absence of an answer to a question the witness was never asked.....

Excuse me? Did anyone even READ the memo to Takasu dated 6 March?

Maybe he should have asked!

In addition, the MEU noted that at the close of your interview, you were asked by the panel whether you had any objection to the manner in which your interview was conducted. You responded: "No." That response undermines your claims regarding the conduct of the interview.

That response however, does NOT address the panels failure to follow up on matters which they did not have time ask about.

The "interview" was a train wreck. If I had been responsible for an interview as badly handles as that one, I would have actually have DESERVED the PIP!

An audio recording would really have been interesting here.....  
...if anyone had asked if there was one.

Why does anyone suppose I had to send a series of 8 e-mails to the panel members on 15 Nov 2013?

These attached a number of documents relating to further harassment in the period after I had made the original complaint - and which implicated Lapointe in the ongoing harassment.

Why did no one follow up with any questions after receiving my memo of 13 November?

So, the MEU does not think it is relevant that I should report:

- 1) that my experience turned out to be an action replay of the experience of Ms. Nguyen-Kropp,
- 2) that the UNDT had found that to be retaliation,
- 3) that not only did we both experience the same tactics, it was all done by THE SAME PEOPLE....

Your further claims, that it was agreed that you would be recalled for a further interview but you were not recalled, that “the remainder of the information was never considered”, and that you were deprived of the opportunity to suggest any additional witnesses, were similarly unsupported. You failed to specify what information was not within the panel’s purview, how this could have impacted your case, and how you were prejudiced as a result. Did I not mention that the panel did not ask about anything that happened after 11 March 2013?

Furthermore, the MEU noted that during your interview, you were asked specifically: “Who do you propose that we interview?” Thus, the MEU considered that contrary to your claim, you were given the opportunity to propose additional witnesses.

My ‘recollection’ was that I said I would so that later.... when recalled to deal with all the stuff they did not have time to cover because they ran out of time.

Your claim that the panel appeared to have failed to consider a pattern of prejudicial behavior in OIOS, including information in UNDT/2013/176

....An audio recording would really be useful here!

The MEU was of the view that your submissions were vague and not substantiated. In particular, you claimed that there were “similarities between the treatment [you] experienced and that suffered by Ms. Nguyen-Kropp” but provided no elaboration. Further, you did not demonstrate the relevance of the UNDT judgment (UNDT/2013/176) to your case, but only made generalized assertions that it criticized the Policy and Oversight Coordination Service, which was found to be “complicit in organizing an unwarranted and retaliatory investigation”; that one of the subjects in your case featured “very heavily” in that judgment; and that it made findings of fact regarding retaliatory action against another OIOS staff member, Mr. Florin Postica, which benefitted Mr. Michael Dudley.

I did not “demonstrate” because I was not asked.

So, we have the same people using the same tactics for the same motive. The panel was provided information about this, they fail to ask me about it, informed me I would be recalled but then did not do so..... and the MEU insists I failed to answer questions I was not asked.

Your claim that the panel failed to consider the damage to your picture frame

Your claim that a picture frame (which had a photograph of you and your niece) sustained “criminal damage” while you were on medical leave was unsupported by any evidence. Hence, it could not be considered further by the MEU.

I handed it over to the panel members and told them it would save me carrying it back “next time.” It in an NYPD Evidence Bag, it was covered in fingerprint powder and it had a rectangle of red tape around what appeared to be a fingerprint..... and the two geniuses on the Panel didn’t even ask me WHY it was like that?????

Your claim that the panel failed to consider a toxic work environment

The MEU was of the view that this claim had no merit because the panel in its report specifically addressed the issue of the working environment and climate in the Investigations Division, OIOS, New York office.

- So, we have:
- an attempt to force an investigator to sign a document admitting to being incompetent
  - a refusal to explain to this investigator what he is alleged to have done wrong
  - an Annual Appraisal that is clearly retaliation
  - a history of retaliation on the part of the staff who refuse to tell said investigator what he has done wrong
  - an abuse of the mediation process
  - a failure on the part of the USG/OIOS to investigate a misconduct complaint made in good faith
  - a long history of a toxic working environment in the New York office of OIOS/ID

and this panel considered this toxic working environment and STILL found there was no harassment?

emphasis on the "could be"

Your claim that there could be a conflict of interest in the referral of your complaint to the Department of Management

The MEU considered that your claim was time-barred. United Nations Staff Rule 11.2(c) provides that a request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the contested decision. You were informed of the referral of your complaint to the Department of Management on 30 July 2013, nine and a half (9.5) months prior to your MER submission and well outside the time frame imposed by Rule 11.2(c).

Legally, that is a fair point, but that does not detract from the fact there COULD BE a perceived conflict here, which would be a good reason for Takasu to reconsider his decision....

Further, and in any event, the MEU opined that your claim was not supported in any way. You alleged that an OHRM staff member, Ms. Ursula Fraser (Staff Development Officer), had been quoted as saying that "there was no obligation on the part of Mr. Dzuro and Ms. Baldini to answer any questions to identify [what your performance shortcomings] may have been." The MEU could not discern how such a remark, if made, could disqualify the responsible official of the Office of the Under-Secretary-General for Management from appointing members of a fact-finding panel to investigate your complaint pursuant to the provisions of ST/SGB/2008/5. In addition, you did not raise any objection concerning this issue to either the EOSG or the Department of Management at the time. I didn't raise it because I was the interviewEE, not the interviewER...

This is something called "accountability" ..... but never mind.

The subjects of the complaint were relying on assurances made by OHRM that they were not under an obligation to explain what I was alleged to have done wrong when attempting to impose the PIP.

Would DM over-rule OHRM?

Your claim that the panel failed to consider the actions of Mr. Dudley, Ms. Baldini, and Mr. Dzuro, primarily their repeated refusal to answer your 38 questions concerning your PIP, and also subsequent harassment

The MEU was of the view that, as evidenced in its report, the panel considered the actions of these individuals in detail. The panel also considered the issue of the 38 written questions which you raised concerning your PIP, to which you sought written answers. Hence, the MEU took the position that your claims had no merit.

How could the Panel consider their actions "in detail" if they did not know what those actions actually WERE?

I'm sorry, but I STILL don't get it; I am denied information about what I am alleged to have done wrong, but I am forced to agree that I am totally incompetent.

The panel never asked about whether I was embarrassed or humiliated - or WHY - but they concluded that this is NOT "harassment"

As to the issue of the 38 questions, which you had raised repeatedly in your correspondence to your supervisors, the MEU observed that the administrative instruction in question does not require written exchanges of the kind you demanded in connection with the implementation of PIPs. The MEU noted that pursuant to Section 10.2 of ST/AI/2010/5, written performance improvement plans are prepared by FROs, and this is done "in consultation with the staff member and [SRO]." Further, Section 10.1 of ST/AI/2010/5 provides that performance discussions should be held on a regular basis to address performance shortcomings.

So 'consultation' does NOT actually mean answering any questions....

**This is the concept of "management" in the United Nations. The Department of Management and Ban Ki Moon's Chief of Staff insist that a staff member is NOT entitled to ask for details about what he is alleged to have done wrong.**

This flies in the face of common sense, of course, and when this question was considered in another case before the UNDT (See Applicant, UNDT/2014/176) the Tribunal unsurprisingly held that the lack of 'behavioural examples' was a fatal flaw in the imposition of a PIP.....

Your claim that you should be provided with a copy of the full investigation report

The MEU was of the view that you are not entitled to a copy of the full investigation report. Section 5.18(a) of ST/SGB/2008/5 provides that if the report indicates that no prohibited conduct took place, the responsible official will close the case, giving a summary of the findings and conclusions of the investigation.

Summary of the findings & the conclusions?

5 bullet points!

There is a serious management lesson here; because it is easy to see that complainants are left with the feeling they were never taken seriously and that the "investigation" was just a cover-up.

**Conclusion**

.....even if it WASN'T a cover-up!

In light of the above considerations, the MEU was of the view that the decision to close your case and not to provide you with a copy of the investigation report should be upheld. **The MEU seem to consider their role is to act as a judge.**

In the light of the foregoing considerations of your case, the Secretary-General has decided to endorse the findings and recommendations of the MEU and to uphold the decision to close your case and not to provide you with a copy of the fact-finding panel's report. Any recourse in respect of this decision may be addressed to the UNDT in accordance with Staff Rule 11.4.

The Secretary-General expressly reserves the right to raise the issue of receivability at any subsequent hearing of this matter. In the event you decide to pursue an appeal, you may wish to obtain further assistance from a counsel through the Office of Staff Legal Assistance ([osla@un.org](mailto:osla@un.org)) free of charge or, if you so wish, at your expense from outside counsel.

Yours sincerely,

Susana Malcorra  
Chef de Cabinet

Why was it so important for the Chief of Staff to protect a clique of senior officials in OIOS who had been connected to a series of mismanaged investigations been found to have committed serious acts of misconduct themselves?

This was a situation where a staff member (me) - who happens to be an OIOS investigator - appearing to poke holes in an "investigation" carried out by lay members of a Fact Finding Panel and the Organization having to vehemently defend senior officials of OIOS even after findings of retaliation and other serious misconduct had already been made against them, by a judge in a UN Tribunal.

ST/SGB/2010/9 states, at para 10.2(d), that the role of the MEU includes "Proposing means of informally resolving disputes between staff members and the Administration."

OK, fair enough.....

There is a very simple solution here, which would quickly and informally resolve the dispute between this staff member and the Administration – and that is to give him the answers to his questions about what he is alleged to have done that his supervisors claimed was a "performance shortcoming."

Whether or not the staff member has a LEGAL RIGHT to have those questions answered is irrelevant; if there was anything genuinely deficient about his work, and the PIP was sensible and would actually lead to an improvement in this investigators professional abilities: OIOS management could – as a special concession - have provided him those answers on a "voluntary" basis.....**but nobody could do that!**

**The 'Conspiracy Theorists' conclusion**

**Senior management of the UN could not afford to concede that the PIP was unwarranted, or that it was patent nonsense, because to do so would reflect badly on Dudley and his supporters in OIOS who had been responsible for trying to impose the thing. Even after the judgement in Nguyen-Kropp & Postica (UNDT/2013/176) was published; they could not allow a misconduct complaint against them to be upheld.**