

UNITED NATIONS



NATIONS UNIES

**OFFICE OF UNDER-SECRETARY-GENERAL FOR MANAGEMENT
Management Evaluation Unit (MEU)**

Please mail your request along with all supporting documentation to the following address:

Management Evaluation Unit
United Nations Secretariat
Room # S-2003
New York, NY 10017

The MEU can also be reached via generic email address meu@un.org and via fax (212 963 8424)

Request for Management Evaluation

PERSONAL INFORMATION

Name: Mr. Peter Anthony GALLO

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Work Phone: 7-4265

Cell Phone: 917-575-8835

Index Number 66715

Current level: P4

Type of Appointment: Fixed Term

Functional Title: Investigator

Dept./Office: OIOS/ID

Duty Station: New York

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ADMINISTRATIVE DECISION TO BE EVALUATED

Specify the decision you are requesting us to evaluate (please attach a copy of the decision, if any)

This is a request for evaluation of the decision by Mr. Yukio Takasu, USG/Management, with the consent or 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.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 when I made a satirical comment on a whiteboard in the OIOS/ID office which referred to Michael Dudley, then Deputy Director OIOS/ID having changed photographs submitted in evidence in an OIOS misconduct investigation, as had been recorded in the public judgement in Nguyen-Kropp & Postica (UNDT/2013/176). The report of that fact finding panel was sent to Ms. Lapointe, who sent it to the ASG/OHRM on 9 April 2014.

On 6 November 2014², 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.³ [*Attachment 1*]

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

On 19 November 2014, the UNICEF Executive Director agreed to Mr. Takasu's request for assistance.

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.

1 Ms. Lapointe's decision of 9 April 2014 is the subject of a separate MEU application of even date.
2 This was also the day on which the Disciplinary Tribunal issued Order No.300 (NY/2014), convening a Case Management Meeting on UNDT/NY/2014/017; which is the case challenging Ms. Lapointe's decision of 31 January 2014 to appoint a fact finding panel in this case.
3 Takasu letter to Anthony Lake re Harassment case. 6-Nov-14. p4

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 2014.⁴

Conflicts of Interest : Takasu

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. He considered that the matter should not be considered by any office under his control, and that instead it should be referred to an entity outside of the United Nations Secretariat.⁵

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]

This suggests that the arrangement was proposed and negotiated by, and the decision was made by the Chef du Cabinet on behalf of the USG/Management.⁶

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.

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 this case) and others in a misconduct complaint dated 11 March 2013 in which Ms. Lapointe failed to take any action.

Having identified there was a conflict of interests, the Department of Management should not have had any part in the decision as to the external party to whom the

4 Letter UNICEF to PAG 22-Dec-14.pdf

5 Takasu letter to Applicant. 1-Dec-14. Para 2

6 Ms. Malcorra's approval was also made on the same day as Order No.300 (NY/2014) was issued by the UNDT; which is either a remarkable coincidence or suggests that the motivation for the approval was the Order itself.

matter might be referred.

Conflicts of Interest : Malcorra

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 decision taken by the USG/Management.

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 the parties responsible for that retaliation would have included (1) Michael Dudley, the original complainant in the matter referred to UNICEF, and (2) Ms. Lapointe, the USG/OIOS. 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 Chef du Cabinet.

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.

When was the decision taken/when did you become aware of it?

The decision was taken by Mr. Takasu on 28 October 2014 and approved by Ms. Malcorra on 6 November 2014. Mr. Takasu delayed communicating this information to the Applicant until 1 December 2014, by which time:

- a) it had already been disclosed to the Applicant on 28 November 2014 in the Respondent's Response to Order No. 300 (NY/2014)⁷ and
- b) UNICEF had already agreed to the matter two weeks earlier (though they had not yet communicated with the Applicant or taken any action on the matter).

Details were provided by UNICEF on 22 December 2014.



⁷ UNDT/NY/2014/017

Who took the decision?

- 1) Mr. Yukio Takasu , Under-Secretary-General, Department of Management
- 2) Ms. Susana Malcorra, Chef du Cabinet, EOSG.

Have you discussed the matter with your supervisor(s)/ the decision maker?

No

If so, when?

n/a

Have you received a response?

n/a

PURPOSE OF YOUR REQUEST

What staff rights of yours have been violated by the decision at issue?

- 1) Right to be protected from retaliation under ST/SGB/2005/21.
- 2) Right to have a decision under ST/SGB/2008/5 made in accordance with para 5.14

What remedy do you seek through management evaluation?

Recision of the decision to refer the matter to UNICEF on grounds that

- a) the decision was ultra vires, and/or
- b) that (i) the USG/Management, and/or (ii) the Chef du Cabinet had a conflict of interests and failed to recuse themselves.

This referral is also necessary to pre-empt any challenge that the Respondent will raise to the receivability of anything that has not first been referred to the MEU.

Would you be amenable to our efforts at an informal resolution of your grievance?

Only if this can be achieved, and completed, within 30 days from the date hereof.

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Please feel free to attach a letter containing your description of the context of the decision, relevant facts, documents and any other information you consider important in the context of your request for evaluation.

COUNSEL INFORMATION

If you have, or should you decide in the future to obtain legal counsel, please provide us with the following contact information:

None Appointed

Signature: _____

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Date:

16 January 2015