UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2009/047/ JAB/2008/091
Judgment No.: UNDT/2010/110
Date: 24 June 2010
Original: English

Before: Judge Adams

Registry: New York

Registrar: Hafida Lahiouel

KODA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:
Monika Bileris

Counsel for respondent:
Susan Maddox, ALS/OHRM, UN Secretariat

submitted to the USG on 2 April 2007. It was highly critical of the applicant but did not find any misconduct. It made recommendations about the need for the applicant to improve her management skills and that, pending improvement, renewal of her contract be for a limited period. In substance, this report was accepted by the USG and certain management bench-marks were instituted. It was never made available to the applicant although she was informed of its gist and the USG's response. At all times she claimed that the panel had not been fair to her, that she had not been given adequate particulars of the allegations, that the panel was biased against her and that she should have been given a copy of the report and an opportunity to respond to it before it was accepted and any action taken in respect of it. She had also requested that she be permitted to record her interview with the panel but this was refused.

4. DPI had regarded the contractual irregularities as relatively minor infractions of the rules, mistakenly made for the best of intentions by the staff and did not consider that a full investigation was warranted. The applicant continued to press for an audit, however, and this was eventually agreed. After some negotiation, an audit by the Internal Audit Division (IAD) of the Office of Internal Oversight Services (OIOS) was agreed to, dealing not only with financial and contractual issues but also the management and administration of UNIC in Tokyo. The audit was conducted in August 2007 and a draft report issued in December. This report was critical of the applicant and recommended reassignment, in part relying on the panel report. It also dealt with financial and contractual irregularities that had been identified. Although DPI was given an opportunity to comment on the draft before it was finalised, the applicant was not shown the report, only becoming aware of it after DPI's comments had been provided. There then ensued lengthy negotiations about whether the applicant could comment on the report. Eventually she was permitted to do so but her comments were not endorsed by DPI and no significant change was made. The final report was issued in May 2008. Since such reports are published on the OIOS website and made available to the General Assembly, that part of the panel report, hitherto a confidential internal document, which was mentioned in the audit, came into the public arena. The applicant sought unsuccessfully to have it withdrawn. The

recommendation of the audit that the applicant should be reassigned until her management competencies had improved was not accepted by DPI, which kept the applicant in her position and put in place measures designed to overcome the problems of dysfunctional relationships between her and the staff. Amongst other things, a team-building programme was undertaken.

5. The applicant's contract was due to expire on 3 June 2008. The USG had earlier indicated that it would be extended for another year but the relationship between the applicant and senior management was fraught. The USG did not approve the extension until 27 May 2008 but the Letter of Appointment was never sent to the applicant, who resigned on 2 June, in the belief that her contract would not be renewed. Even if the applicant had not resigned, there was no prospect that the Letter of Appointment would have reached her before the expiry of her contract. No attempt had been made to contact the applicant to tell her of the renewal. There is evidence that, even if the contract had been renewed, she had intended to resign.

The procurement irregularities

6. It is self-evident that the identification of one irregularity that involved fictitious accounting suggests that others might well have occurred; it is also obvious that there is a real possibility that other irregularities may have occurred in different contexts within the office concerned. In short, if the accounting was (avoiding euphemism) dishonest in one transaction, a great deal more than that transactionts that ot(t1T19.069

The investigation of staff complaints

8. It would be naïve to suppose that the members of staff, in particular the Administrative Assistant whose conduct was in question, were not very likely, indeed, virtually certain, to be exceedingly embarrassed by the disclosures and, very possibly, resent the critical attitude adopted (rightly in my view) by the applicant in respect of it. In the context where (as I will later discuss) the applicant's relationship with some, if not all, staff was already fraught, this situation was most unfortunate to say the least. Moreover, it was a situation for which the applicant could not fairly be regarded as responsible.

9. As mentioned in the introduction, in January 2007, a number of the staff sent a letter of complaint about the applicant to the DSCD alleging misconduct, including harassment and misbehavior as an international civil servant. The allegations were supported by the two former directors who had been involved in the financial irregularities. Although no link has been, or probably could be, shown between the decision of the staff to make this complaint and the exposure of the financial irregularities, the contention of the respondent (reflecting the opinion of the DSCD) that there was no connection defies common sense. The important point is that the complaints themselves, or the way in which they were expressed, needed to be evaluated with an objective eye and necessarily therefore with a degree of caution. The submission on behalf of the respondent that the staff "had accepted responsibility for their actions", even accepting it to be true, rather misses the point. Achieving a senior management appointment in the UN does not – or, at least, should not – amputate the ability to understand the real world. This is not to say, of course, that the staff (and those that supported them) were badly motivated. Rather, it means that, in evaluating their complaints, it was necessary to bear in mind the very real possibility that ill-will – whether consciously appreciated or not – was operating, at least to the extent of preventing an objective appreciation of the interactions complained about and a disposition to place the worst possible interpretation on the applicant's statements or actions.

10. The USG's letter of 1 February 2007 to the applicant informing her of the allegations did not provide any detail, but summarised them as allegations that the applicant "mismanaged the UNIC and mistreated and threatened its staff" and "conducted private business activities from United Nations premises", commenting that the allegations "are of a serious nature" and that "United Nations rules and regulations require that the head of Department appoint a Panel of Inquiry to undertake an investigation". No such rule or regulation has been identified by the respondent and it is clear that no such panel was indeed required, although it can readily be accepted that the USG was obliged to investigate the allegations and could choose to do so by appointing a panel to conduct it. Counsel for the respondent has submitted that the procedure adopted was within ST/AI/371, the administrative instruction dealing with disciplinary proceedings. However, although that instruction refers to the requirement that the relevant official be of the opinion that there was reason to believe that misconduct may have occurred and to an ensuing "preliminary investigation" if such a reason to believe were established, it does not require the establishment of a panel of inquiry. It remains unclear (though it does not matter) whether the panel was established for the purpose of ascertaining if there was any such reason to believe or to conduct a preliminary investigation.

11. The applicant complains that the precise legal basis for the establishment of the panel was not stated to her. However, on 4 March 2007, the applicant was informed by the USG that the investigation was being conducted under Chapter X of the staff rules and ST/AI/371. It should, in all fairness, have been made clear to the applicant, if this were the case, that this was merely an initial inquiry to ascertain whether there was reason to believe that misconduct had occurred or, on the other hand, whether the USG had determined that there was reason to believe this and the panel was undertaking a preliminary investigation to determine whether it appeared that misconduct might have occurred. This was not made clear to the panel, which made what appears in some respects to have been a final determination of a number

thought that they were conducting a preliminary inquiry under the administrative instruction.

12. There is an important distinction between an inquiry or even investigation (the term used does not matter) into management performance or office efficiency and the like on the one hand and allegations of possible misconduct on the other. The latter situation is governed by a distinct set of procedures involving significant protections for a staff member. The former requires reasonable (or, more precisely, not unreasonable) processes directed to obtaining the desired information but no formal constraints are placed on the Secretary-General or his delegates in the ascertainment of information necessary for the proper administration of any part of the Organization's affairs. It is obviously an obligation of the staff member to fully cooperate in such a process. Where, however, the inquiry is made under ST/AI/371, it seems to me that the staff member whose conduct is under investigation is not under the same obligation. This follows from the undoubted grant of a right of

allegations that had been made against her and thus the question of voluntary cooperation did not arise. Even so, the applicant was entitled to be told the precise legal basis of the investigation and was not.

13. Leaving aside the matter of particulars and whether sufficient details were provided to enable her to respond adequately to them, two other issues have been raised as to the procedures followed by the panel. The applicant had asked to be represented by counsel but this was refused on the basis that no charges had been brought against her and that at the "fact-finding" stage there was no right to counsel. She was later informed, however, that she could be accompanied by a staff member or ex-staff member when she was interviewed but that person could not participate or give any advice or help and was to be merely a silent observer. These limits certainly implied that the interview was not a voluntary exercise. The applicant had also sought permission to record the interview between her and the panel. The USG refused this request in language that can only be regarded as bureaucratese – namely sounding rational but in fact conveying no real or useful information – stating "taping the interview … would not be in the best interest of a fair and expeditious investigation … [and that there was a] need to ensure that confidentiality is respected at each and every stage of the process". These so-called reasons were completely unreasonable, indeed arbitrary. No question of delay was involved. The applicant had not suggested that the panel would have to make the arrangements for taping. Bringing a recorder into the room would not be productive of any delay at all. The first reason was thus an invention. The second was just as specious. Only a person with a very strange notion of fairness indeed could have thought that a reliable and undeniable record could or might be unfair. So far as confidentiality is concerned, if the applicant was bound to keep the interview confidential (and it is not altogether clear that indeed she was – such limits must be made explicit and this certainly was not) then she was bound to do so whether she had a record in written or other form of her interview. One is therefore left to speculate as to the real basis for this refusal. The effect of it is clear enough of course, and would have been obvious to that mythical figure I have already alluded to in another judgment – blind Freddy sitting

outside the Wiluna pub – namely that there would be no reliable and undeniable record of what transpired. The conclusion is inevitable that this was the object of the prohibition. The difficulty with it is that it is not possible to identify any legitimate administrative purpose that could be served by such an objective.

14.

unfairness. In substance, it meant that her interview was objectively unexaminable. Since this was the result of a deliberate decision by the USG in the context of a disciplinary process (that is, one undertaken pursuant to ST/AI/371) it follows that it was a breach of the obligation of good faith and fair dealing. So far as the significant difference in recollection between the chairperson of the panel and the applicant, in substance, as to whether the interview gave the latter a fair opportunity to deal with the statements of the staff members that had been made to the panel prior to hers – on the chairperson's account there probably was and on the applicant's account there probably was not – is concerned, it is no reflection on the chairperson to conclude that the respondent, having denied the applicant an accurate record, cannot take advantage of its own unreasonable conduct and insist that the Tribunal should act upon the basis of evidence based upon a recollection that common sense must assess as inherently unreliable, at the very least in detail, if not overall. And it is in the details that the crucial differences are to be found.

16. I should add that I do not accept the argument that was proffered by counsel for the respondent to the effect that recording such interviews had not been done before. First, this is scarcely evidence and I am not sure that someone in the applicant's position had not previously asked to record such an interview; second, and more importantly, such an explanation fails to grapple with the real issue, namely the purpose of recording and whether that purpose is acceptable or not. I cannot accept that it is, at least in the circumstances here, reasonable that one party should insist that no plainly reliable record should be made, when the means of doing so are so simple and easily achieved. The applicant was in an impossible position: the only basis upon which she would be permitted to defend herself was if the only record made was unreliable.

17. It is obvious from what I have already said that much depended upon the view that the panel formed as to the reliability of what it was told by the staff members who were interviewed by them and their view of the applicant. It interviewed the staff members first, then the applicant and her witnesses.

18. The applicant objected to the constitution of the panel as not appropriate. However, this complaint should not be accepted. It is unnecessary to give further details of this issue. No question of bias or prejudgment was raised. Another objection raised was that the Chairperson spent some hours in the company of a crucial witness before writing the report. The Chairperson has testified that this did not occur and, as I accept her evidence, I reject the objection.

19. The panel report expressed in categorical terms adverse findings against the applicant. There is no description, except in the most general terms, or analysis of the evidence and many of the points that were made by the applicant are not alluded to, although her extensive written response to the particulars which had been provided were annexed to the report. Some adverse matters are mentioned as allegations or claims rather than findings of the panel. There is no reference to the applicant's possible role in respect of the financial irregularities. The adverse findings, at face value, would seem to have involved misconduct. However, no findings or recommendations were made in these terms and the issues were all dealt with as managerial and administrative. As I understand the Chairperson's testimony before the Tribunal, the panel was of the view that, since the applicant (who, in substance, admitted to the occasional angry word and conceded that her communications could be peremptory at times) had not intended her conduct to be intimidating, it did not amount to harassment. The Chairperson also testified that the panel had been unable to determine whether this conduct was occasional or continuous and had not purported to do so. She said that, where there was contradiction between a staff member on the one side and the applicant on the other, no conclusion was drawn,

time does not enable her to recall the allegations involved. In my view the only fair manner of deciding this dispute is to accept the applicant's evidence – it being at all events not unreasonable – in light of the respondent's refusal to permit her to make the record she requested. But that is not the end of the matter. I do not doubt that the panel was acting on its best understanding of the evidence as a whole. I agree that there are some statements and questions recorded in the notes of the interviews with staff indicating that particular members had prejudged particular issues against the applicant without yet having heard from her. Yet it is important that such a panel is not a court and, while it must be fair, it must be allowed to do its reasonable best to ascertain the facts as it thinks is right. I am persuaded that this is what the panel conscientiously attempted to do and that, for the purposes of its inquiry, its report was adequate, though far from ideal. I am not prepared to move from indications of prejudgment to a conclusion that it occurred.

23. When it comes down to the line, it is clear that the panel members believed there was at the least a substantial kernel of truth in what the staff had complained about, certainly sufficient to warrant a management response, even if their criticisms of the applicant went further than a skeptical and objective mind would likely have allowed. I reiterate that I have no way of sensibly assessing for myself the cogency or persuasiveness of any of the testimony, though certainly it might well have been elicited in a better way, and it is not appropriate that I should attempt to do so.

24. (I have emphasised the purpose of the panel report since it was used for quite another purpose by an ensuing audit, which I discuss below.)

25. My conclusion is that, although the interviews were not ideally undertaken and there are real questions about the appropriateness of the language used by the panel in criticising the applicant, neither the evidence nor the report discloses such an error as would justify a finding that the investigation was conducted so as to constitute a breach of the obligations of the Organization to the applicant. Nor was the conduct of the investigation and the language of the report so manifestly unreasonable or unjust as to indicate a latent breach of those obligations. It seems to

me also that it was legitimate for the panel to describe the management issues as they considered them to be and make suggestions as to their resolution. What, then, is to be made of the refusal to allow the applicant to record her interview? It seems to me that the refusal was a breach of the rights of the applicant but that it does not follow in the circumstances here that the investigation was vitiated by its breach. The panel's conclusions were, in their minds, justified by the evidence that they heard and considered and I am not prepared to conclude from the fact that the panel's notes of the applicant's evidence did not contain all her denials that the view of the panel that the adverse findings they were prepared to make were in substance based upon undenied complaints was wrong.

26. Accordingly, although I am far from persuaded that the conclusions of the panel were correct or that the reasoning they adopted was convincing, I decline to quash the report of the investigation panel for formal shortcomings and am not prepared to conclude that its findings were not reasonably open.

Action following the panel investigation

27.

> as well as your written response to the allegations, were attached to the Panel's report.
>
> I am satisfied that the Panel did not find any evidence of outright wrong-doing or abuse of power, or any mixing of private business and official functions.
>
> Nonetheless, the Panel reported in its findings what it considered to be serious managerial deficiencies on your part. From the interviews conducted, it became evident that since you had taken office a year ago, the atmosphere at UNIC Tokyo had steadily deteriorated to one of fear and mistrust, and subordinates felt abused, threatened and intimidated to the point that one staff member and one intern took ill. Most persons interviewed attributed this largely to what they felt was your heavy-handed conduct.

The letter went on –

> With regard to your contractual status, I have decided to extend your contract for an initial six months. During this time I expect you to demonstrate a clear improvement in your managerial performance and your relations with your staff … [Any] further extension of your contract will be made contingent on a demonstrable improvement in staff-management relations and in the atmosphere in the UNIC.

28. Several points arise from this letter. The first is that the applicant was regarded as being at fault for what had occurred at UNIC, without any reference to the countervailing factors to which the panel referred or the matters I have discussed above. Second, the USG was untroubled by the apparent contradiction between concluding that the applicant had indeed not abused her position, but being nevertheless responsible for the staff's feelings of being abused, threatened and intimidated. There was no proper basis for the USG to accept, as he apparently did, that the complaints of the applicant's heavy-handedness were completely justified and the attempted avoidance of downright blame by attributing the opinion to others was a transparent device. Again, there is an implicit summary dismissal of the applicant's reiterated point that the staff (or some of them) had been acting in reprisal for her actions over the financial irregularities and had been uncooperative from the beginning of her tenure. Even if these factors were not the complete explanation for the complaints – and comm dintern d r]een r]d[(the comt52ve0.00aTw 25. -1.7oten19 comtse fact8Tc 0.

misunderstanding. All in all, the response of the USG was, ironically, itself judgmental, heavy-handed and indeed, one-sided and unjust. At the same time, his insistence on improvement of managerial performance was not, of itself, misplaced, having regard to the terms of the report, though quite what would be regarded as such an improvement needed to be made clear: smiling faces would have not answered one assumes; nor would the approval of staff of the applicant's management.

29. The most important issue for present purposes arising out of the USG's response is his failure to provide the applicant with a copy of the report. It may be that, following an initial or a preliminary investigation under ST/AI/371, it is appropriate not to disclose the ensuing report to the subject where no action is taken upon it. However, where action is taken, it seems to me that good faith and fair dealing require its disclosure – perhaps with some qualifications as to truly confidential matters. This is exactly the situation here. Significant requirements were placed on the applicant in respect of her employment and it was altogether inappropriate to do so without giving her an opportunity to respond to what was proposed and the reasons for it. This required the report to be disclosed and the refusal to do so constituted a breach of the obligation of good faith and fair dealing.

The OIOS audit

30. IAD conducted an audit of UNIC Tokyo in August 2007. On 27 September 2007 the applicant, on becoming aware shortly before that it was intended to include the findings of the panel in the audit report, wrote to OIOS protesting about such a course. She pointed out that she had not seen the panel report and thus did not have the opportunity of responding to it and that the auditors themselves were no part of the panel's investigation and were thus not in a position to endorse its outcome. This was important because she feared that the report, which was an internal confidential document, would, by virtue of what was proposed, enter the public domain.

31. The draft report was provided on 24 December 2007 to DPI for comment. The USG saw the applicant in Bangkok on 17 January 2008 and told her that the

audit report had been completed and it was very critical of her. He asked if she had seen it and, when the applicant replied that she had not, he said he would arrange for her to be sent a copy. On the same day, the DSCD gave the applicant a copy of the audit report and DPI's comments. It is extraordinary that the applicant had not been shown a copy of the draft report immediately after it had been issued as it affected her so directly. The suggestion that she was not entitled to see it must be rejected. The report was a draft, it was sent to DPI for the express purpose of obtaining a response and the applicant was self-evidently at least one of the persons whose response should have been obtained. Even apart from notions of fairness, appropriate management should have led to the same conclusion. The DPI response to the draft was provided to OIOS on 9 January 2008 without the benefit of any consultation with the applicant. This was an oversight which was not only quite unreasonable from an administrative point of view, it was most unjust to her. The response was confined to dealing with the recommendations and did not deal with the factual conclusions upon which the recommendations were based. Why this also was unfair to the applicant is explained in the ensuing paragraphs. The document provided to the applicant on 17 January 2008 was the draft report, although the final report had been issued that day. The applicant and the DSCD discussed the audit on 20 January 2008 but, again, this was the draft. The horse had by now well and truly left the stable, although ineffectual attempts were later made, as will be seen, to get it back.

32. The draft report stated that it had been requested by the applicant who had alleged financial irregularities by staff members – those to which I have already referred – and had claimed that her efforts to ensure compliance with the Organization's requirements had led to allegations by the staff against her. After mentioning some formal matters, the draft report commenced its discussion of substantive issues by noting the staff complaints that gave rise to the investigation by the panel –

> In December 2006 and January 2007, the interns and staff members wrote letters to the Secretary-General and the Director of Strategic Communications Division in DPI questioning the management ability

complains that this was unfair. I agree. The panel report should not have been used in that way by the auditors: on all hands it was accepted to be a preliminary report and, at the very least, should have been so described.

35. The comments in the report about the applicant, which any fair reader would have read as agreed by the auditors as fact, rolled up as the loss of "respect, trust and confidence" in the applicant, without any attempt to show how or why this attitude was justified, was also unfair and certainly one-sided. If the auditors merely intended this reference to be taken as a report of complaints rather than their own opinion, they should have explicitly said so. The mere repetition of some of the applicant's complaints about staff was not a corrective balance. The phrase "facts on the ground" was scarcely informative: what facts? in what way was the Director "unable to manage the office and the staff"? in what way was productivity affected? In the absence of any further information, the use of these striking and apparently all encompassing phrases obscured rather than clarified the situation and, as importantly, made it impossible to evaluate the utility, let alone justice, of the recommendation that the applicant should be retrained in "managerial competencies" which was itself so unspecific as to be practically useless: what competencies? what training? Moreover, the apparent dismissal of the applicant's criticisms of staff, which were certainly worthy of consideration, in favour of the staff's point of view demonstrated an inappropriate bias. To revert to the issue of fairness, how was it possible to respond to criticisms cast in these terms? It is also a question of sensible administration. The informed evaluation and response by one or more of the subjects of an audit (here, DPI and the applicant) is an essential part of the process for obvious reasons. The whole point is to end up with an improved situation which necessarily involves accurate facts, objectively described and contributions both about the facts and the recommendations from all the relevant perspectives. This is elementary. An audit that is cast in terms that effectively prevent such analysis and response is, if not useless, of very limited use.

36. No objective examiner of this report could regard it – so far as it concerned management issues – as in the slightest degree persuasive. In the absence of any substantive evidence and any analysis that showed why the conclusion was justified and the recommendation worthy of consideration, the draft should have been returned with the observation that mere repetition of charges and countercharges with an unexplained expression of support for one side rather than the other could scarcely be regarded as an audit and a request that its authors should do their job. The obvious point that I have already made about the possible significance of the applicant's attitude to the financial irregularities in exacerbating possibly fraught relations and perhaps leading to exaggeration and resentment is not mentioned, nor is the responsibility of the staff for contributing to harmonious and productive relations. Overall, the report does not suggest that the auditors knew anything substantive about managerial competencies themselves.

37. In my view this draft report (which became, in substance, the ultimate report) was, so far as its discussion of the applicant's relations with the staff was concerned, an abuse of the power of the auditors virtually to say what they liked without the risk of serious review. Indeed, their lack of accountability was relied on by counsel for the respondent to excuse the respondent from responsibility for their actions. However, with power of this kind comes corresponding responsibility, especially since the auditors were, I infer, well aware of the use that would be made of their report and the publicity which might well attend it. I do not accept that authors of an audit report are not accountable, at least within OIOS, for the adequacy of their work. Audit reports which contain conclusions and recommendations such as those expressed here should ensure that those conclusions and recommendations are fully justified by stated facts and not, as here, mere assertions. So patent were the shortcomings of the audit report in respect of the administrative and management problems in UNIC Tokyo, that it should not have been presented. Of course, I do not know whether the conclusions were incorrect or the recommendation unjustified as such: what I do conclude, however, is that there is no process of investigation described or reasoning expressed that justifies any confidence in the propriety of the

38. Considerably greater detail was provided in respect of the financial irregularities. Even here, however, there was no useful detail as to what was actually done and how it came about, though the persons who were directly concerned were identified by their positions. Other obvious questions were not asked: could this have been happening elsewhere in DPI? were there other dishonest accounting documents created? and so on. The criticisms of the other aspects of financial management concerning segregation of duties, delegation of authority and the documentation of procurement processes remained largely general with few time frames identified, only limited responsibility ascribed and no ev

39. So far as the recommendation concerning the applicant was concerned, DPI's response was implicitly to accept the criticisms and propose that she and the staff should undertake a team-building exercise together with other remedial action. This, of course, amounted to a (entirely justified) refusal to accept the recommendation. In the sense that this was an apparent attempt to move on – leaving blame aside, certainly relationships were fractured and unhealthy – it was a sensible, indeed laudable, proposal. However, the audit now took on a life of its own. On 17 January 2008 the finalised audit was circulated under cover of a letter from the Director, IAD, noting the non-acceptance of the recommendation about the applicant, requesting that this response be reconsidered "based on the additional information provided in the report" and pointing out that progress would be the subject of a report to the General Assembly and the Secretary-General. In fact, no significant additional information had been provided. The unqualified endorsement of such an obviously flawed report, despite the attitude of DPI, indicates that objective analysis had given way to inappropriate defensiveness, perhaps a way of life in any large organization but in its wake causing much damage, as the applicant was to experience.

40. Focusing on the process, however, it was evidently unfair to use the panel report for a purpose to which it was not directed, when it was subject to all the implicit qualifications associated with its actual purpose, especially when it had not been seen by the person of whom such serious criticisms were made and, even more crucially, when the report was in substance and form a confidential document and the consequence of its being utilised by the auditors was to breach that confidentiality. Nor was it fair or appropriate that the auditors should have referred to their own enquiries of staff and the applicant without giving the latter an opportunity to deal with any criticisms or issues that it was proposed to publish.

41. I wish to return briefly to the narrative of events so far as the applicant was concerned. I mentioned above that on 20 January 2008 she met in Bangkok with the DSCD to discuss the draft report, the final report it seems not yet being available although it had been issued. The applicant told the DSCD, in effect, that the report

was wrong in a number of respects. The DSCD said that the response had been

applicant said was accurate but, rather, whether it should have been given serious consideration and taken into account in finalising the audit.

43. On 25 February 2008, the applicant's response was forward by DPI to OIOS together with a memorandum of the USG (dated 22 February) that stated, inter alia –

> While noting several inaccuracies and overstatements in [the applicant's] presentation, I have decided that DPI should not address her comments at this stage. I, and my senior managers, nevertheless, would be pleased to provide additional information in this connection, as needed.
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> …
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> As for DPI's comments on the OIOS audit report, they remain unchanged and as reflected in thethe05(.)]TJ re

explicitly that of deputy to the Director. As it happened, the same arrangements were current in UNIC Washington and UNIC Brussels. I accept that this proposal was intended to provide the applicant with additional support. The problem really was that, by this time, the applicant (I believe) felt so isolated and so criticised in a one-sided way that she was unable to view actions such as this except through that prism. Thus, the provision of additional support was seen as confirmation that DPI had judged (unfairly) her performance to be inadequate. On 5 May 2008, the applicant informed DPI that she opposed the proposal, essentially because it was unnecessary. DPI accepted this view and informed the applicant on 10 May 2008 that the matter would not be pursued.

48. In the meantime, on 2 May 2008, the applicant filed a complaint of harassment against the DSCD with OIOS and OHRM, alleging this had been going on since August 2006. She said that the trigger for making this complaint was the DSCD's "report" quoted in the USG's memorandum of 4 April 2008 which she claimed was "false … [and made with the purpose] to demean the Applicant's character, destroy her trust and eventually deprive her career opportunity". I do not intend to enter into the complaints made by the applicant, though I accept they were sincerely felt. However, in fairness it must be said that the "report" concerned matters which in my view the DSCD was in duty bound to bring to the USG's attention. I certainly do not accept that it was made for the motives alleged by the applicant. It is apparent that, as I have already mentioned, the applicant's ability to objectively consider any of DPI's actions with regard to her had been badly affected by her experiences with the staff, the panel report and the audit.

49. In the following weeks the situation, or aspects of it, were aired in the media by steps taken by both the applicant and the USG. A great deal of material about these unfortunate occurrences has been tendered but it seems to me that they do not add anything useful to the facts of the case, except to provide evidence of the increasing divide between DPI and the applicant.

as to what to do about it. The contrast between this approach (which strikes me as thoughtful common sense) to the management issues in UNIC Tokyo and that of the auditors is marked and very much to the latter's disadvantage.

51. Unfortunately, the actual renewal of the applicant's contract, expiring on 3 June, was left to the last minute. It was not until 27 May 2008 (a Tuesday) that the USG confirmed that the extension of the contract for a further one year was to be processed and the Letter of Appointment signed. It was placed in a sealed envelope marked "private and confidential" and then in the inter-office mail to be sent to the Pouch Unit, but it was too late to be sent that day. Even then, it would not have arrived in UNIC Tokyo until 2 or 3 June. As it happened, it was still with the Pouch Unit on 4 June. However, it was then too late since, on 2 June 2008, the applicant resigned. In her letter to the Secretary-General briefly explaining the reasons for ed trever, no acftrelat letbe sent

10 June. Although there is some force in this submission, it really amounts to no more than supposition and I must disregard it. On the other hand, I am satisfied that the applicant had at the very least given serious consideration to resigning, at least by May 2008 and felt that it was impossible for her to stay on. In substance, this became increasingly clear when she heard nothing about renewal and, when the contract did not come on the penultimate day, that proved that she was not wanted.

54. On 12 June 2008, the USG held a press conference with the Japanese media about the applicant's resignation. I accept that this was in response to media queries that were, certainly in part at least, prompted by the applicant's article. The applicant complained that the USG referred to her "harassment" (the respondent contends that the word used was "mistreatment", but this is not a significant difference) of her subordinates. However, the article was ex

There was also, I think, a difference of opinion about management styles and an inclination to believe the staff – though not perhaps entirely – rather than the applicant about the problems. But my reading of the extensive correspondence (an interminable task) suggests a somewhat confused but genuine attempt to grapple with