



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2018/023
Judgment No.: UNDT/2018/042
Date: 21 March 2018
Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

ATOME

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Steven Dietrich, ALS/OHRM

Introduction

1. On 5 February 2018¹, the Applicant, a former staff member of the United Nations Organization Stabilization Mission in the Democratic Republic of Congo (MONUSCO), filed an application with the United Nations Dispute Tribunal (UNDT) in Nairobi. The Applicant contests the determination of his 2010-2011 step in grade.

2. On 2 March 2018, the Respondent filed a motion for leave to file a reply limited to receivability, including his arguments in this regard. The Respondent submits that the application is not receivable *ratione materia* and *ratione temporis*.

Considerations

Receivability

3. The issue arising for consideration is the receivability of the present application. Article 2.6 of the Statute of the UNDT provides that in the event of a dispute as to whether the Tribunal has competence under the said statute, the Tribunal shall decide on the matter. In *Christensen* 2013-UNAT-335, the United Nations Appeals Tribunal (“the Appeals Tribunal”) confirmed that legal position when it held that “the UNDT is competent to review its own competence or jurisdiction in accordance with Article 2(6) of its Statute” when determining the receivability of an application.

4. Having read the Respondent’s motion, the Tribunal considers it appropriate to examine the preliminary issue of jurisdiction or its competence to entertain this application.

5. Generally, except in cases where a disciplinary or non-disciplinary action is taken against a staff member following a disciplinary process or where the

¹ The Applicant filed an incomplete application with the Tribunal on 5 February 2018. He completed his application on 21 February 2018.

administrative decision complained of is based on the advice of a technical body, any individual who has *locus standi* before the Tribunal is required to first request management evaluation before bringing an application. In that regard, staff rule 11.2 provides as follows:

- (a) 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* (emphasis added).
 - (b) A staff member wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General, or of a decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following the completion of a disciplinary process is not required to request a management evaluation.
 - (c) 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 administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.
6. Likewise, art. 8.1 of the Tribunal's Statute provides *inter alia*:
- An application shall be receivable if:
- ...
- (c) An applicant has previously submitted the contested administrative decision for management evaluation, where required[.]
7. In addition to the unambiguous terms of these provisions, the requirement of filing a request for management evaluation prior to filing an application with the Tribunal has been reiterated on several occasions by the Appeals Tribunal (e.g., *Rosana* 2012- UNAT-273; *Dzuverovic* 2013-UNAT-338).

8. The Applicant contests the determination of his 2010-2011 step in grade. The decision he complains of does not fall under any of the two categories of decisions for which a management evaluation may not be sought under staff rule 11.2 (b), to wit, decisions taken pursuant to advice from technical bodies and the imposition of measures pursuant to staff rule 10.2 following the completion of a disciplinary process.

9. The Applicant did not provide in his application any document showing that he had filed a request for management evaluation. While he indicates in his application that he made a request to “MONUSCO Human Resources Section” and the “Finance Section” in 2009, the fact of the matter remains that he failed to submit a proper request for management evaluation. The application is therefore, not receivable *ratione materia*.

10. Having said the above, the Tribunal finds also that the application is not receivable *ratione temporis*. This is because pursuant to art. 8.4 of the Tribunal’s Statute, an application shall not be receivable if it is filed more than three years after the applicant’s receipt of the contested decision.² The Appeals Tribunal has consistently held that art. 8.4 is an “absolute restriction on [the UNDT’s] judicial discretion”.³ Since the application was filed, at the earliest, on 5 February 2018, over seven years after the Applicant’s receipt of the contested decision, the application is not receivable.

² Bangoura 2012-UNAT-268; Khan 2017-UNAT-727.

³ Reid 2013-UNAT-389;

Conclusion

11. In view of the foregoing, this application is struck out for being not receivable and therefore not competent before the Tribunal.

(Signed)

Judge Nkemdilim Izuako

Dated this 21st day of March 2018

Entered in the Register on this 21st day of March 2018

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi