



Before: Judge Margaret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye-Berko

NJAGI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Stanley Kang'ahi

Counsel for the Respondent:
AAS/ALD/OHR

Introduction

1. The Applicant contests the decision by the Under-Secretary-General for Management Strategy, Policy and Compliance (“USG/DMSPC”) to impose on her the disciplinary measure of demotion with deferment, for a period of three years, of eligibility for consideration for promotion in accordance with staff rule 10.2(a)(vii) and administrative measures consisting of training concerning the procurement process and the use of Umoja. Further, the USG/DMSPC authorized the recovery of KES429,800 through deductions from the Applicant’s salary, in accordance with staff rule 10.2(b).

Background

2. On 7 October 2020, the Office of Internal Oversight Services (“OIOS”) referred the Applicant’s case to the Office of Human Resources (“OHR”) for appropriate action. The referral was based on an OIOS investigation report relating to an allegation that between May and June 2018, the Applicant had engaged in a fraudulent procurement process for the acquisition of toner cartridges.

3. On 12 July 2021, OHR initiated a disciplinary process against the Applicant. The Applicant provided her comments on the allegations of misconduct on 10 September 2021. After a review of the entire record, the USG/DMSPC concluded that: (i) the allegations against the Applicant had been established by the preponderance of evidence; (ii) that she violated staff regulations 1.2(b), 1.2(e), 1.2(q), and rule 101.2 of ST/SGB/2013/4 (“Financial Regulations and Rules of the United Nations”); (iii) her actions were, at least, grossly negligent, if not willful; (iv) her actions amounted to misconduct; and (v) her procedural fairness rights were respected throughout the investigation and the disciplinary process. In light of the foregoing, the USG/DMSPC imposed the disciplinary and administrative measures detailed at paragraph 1 above on

the Applicant via a memorandum dated 31 March 2022.¹ The Applicant received the USG/DMSPC's sanction letter on 1 April 2022.²

4. The Applicant requested management evaluation of the contested decision on 30 June 2022.³ In a response dated 6 July 2022, the Management Evaluation Unit informed the Applicant that her request was not receivable.⁴

5. The Applicant filed an incomplete application via the United Nations Dispute Tribunal's ("UNDT") Court Case Management System ("CCMS") on 7 July 2022, which she completed on 24 July 2022.

Considerations

6. The question before the Tribunal is whether the Applicant filed her UNDT application within the stipulated timelines.

7. The United Nations Appeals Tribunal has previously held that it is proper/appropriate for the UNDT to consider *sua sponte* the issue of jurisdiction and to consider whether it has jurisdiction before addressing the merits of an application.⁵ In the current case, the Tribunal did not deem it necessary for the application to be served on the Respondent due to the irreceivability of the application.

8. Staff rules 10.3(c) and 11.2(b) stipulate that:

10.3(c): A staff member against whom disciplinary or non-disciplinary measures, pursuant to staff rule 10.2, have been imposed following the completion of a disciplinary process may submit an application challenging the imposition of such measures directly to the United Nations Dispute Tribunal, in accordance with chapter XI of the Staff Rules."

11.2(b): A staff member wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies, as

¹ Application, allegations of misconduct dated 12 July 2021 and sanction letter dated 31 March 2022.

² Application, para. 5 (section V – Details of the contested decision).

³ Application, section VI (management evaluation).

⁴ See MEU/189-22/R [JYK].

⁵ See *Elhabil* 2016-UNAT-655 citing *Christensen* 2013-UNAT-335 and *Saka* 2010-UNAT-075.

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.

9. Article 8.1(d)(ii) of the UNDT Statute stipulates that in cases where management evaluation of the contested decision is not required, an application shall be receivable if an application is filed within 90 calendar days of the applicant's receipt of the administrative decision.

10. In the present case, the Applicant is contesting the imposition of disciplinary and non-disciplinary measures following the completion of a disciplinary process thus, she was not required to request management evaluation as per staff rule 11.2(b). In accordance with art. 8.1(d)(ii), her application should have been submitted directly to the UNDT within 90 calendar days of her receipt of the administrative decision.

11. The Applicant indicates in her application that she received the sanction letter/contested decision on 1 April 2022. This means that she had to file her UNDT application on or before 30 June 2022 to be within the prescribed time limits. She did not, however, file an incomplete application until 7 July 2022 and a complete application until 24 July 2022, which is outside the timeframe stipulated by the UNDT Statute. The application is therefore time-barred.

12. The Tribunal also holds that the Applicant has failed to articulate any exceptional circumstances justifying the delay.

Conclusion

13. The application is dismissed as not receivable *ratione temporis*.

(Signed)

Judge Margaret Tibulya

Dated this 27th day of July 2022

Entered in the Register on this 27th day of July 2022

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi