



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2010/061
Order No.: 145 (NBI/2010)
Date: 27 July 2010
Original: English

Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pelé Fomété

AMEER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON RECEIVABILITY OF
APPLICATION**

Counsel for applicant:

Self-represented

Counsel for respondent:

ALS/OHRM, UN Secretariat

Introduction

1. The Applicant submitted an application, dated 23 June 2010, in which he indicates that the author of the decision he is contesting is the Management Evaluation Unit (MEU) and that the decision he is contesting is MEU's failure to evaluate documents and information provided in respect of his e-PAS validity and complaints against his First Reporting Officer and continuous mistreatment.

Considerations

2. Pursuant to Article 8(1)(c) of the Statute of the United Nations Dispute Tribunal (UNDT Statute), an application shall be receivable if "an applicant has previously submitted the contested administrative decision for management evaluation, where required [...]". Thus, where an administrative decision is being contested, the first step in the process is for the Applicant to request a management evaluation, except in disciplinary matters.

3. In the present case, the Applicant requested a management evaluation of the decision not to renew his fixed-term appointment beyond its expiration date of 6 April 2009. By a letter dated 25 March 2010, signed by the Under-Secretary-General for Management, the Management Evaluation Unit (MEU) informed the Applicant that based on the management evaluation, the Secretary-General had concluded that the contested administrative decision was taken in accordance with the applicable rules and policies of the Organization and was within his terms of appointment.

4. The Applicant subsequently filed an application with the Dispute Tribunal, dated 23 June 2010, contesting MEU's "*fail[ure] to evaluate documents and information provided in respect of [his] e-PAS validity and complaints against his*

First Reporting Officer and continuous mistreatment”, which was not the subject matter of his 6 April 2009 request for management evaluation. The Tribunal also notes that the Applicant indicated in his application that he has not requested a management evaluation of the MEU decision he is challenging.

5. Based on the above, the Tribunal considers that the Applicant has not complied with the provisions of Article 8(1)(c) of the UNDT Statute as he has not submitted the decision he is currently contesting in his application for management evaluation.

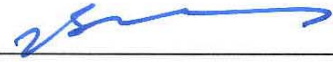
6. The Tribunal takes the view that the underlying philosophy of management evaluation is to allow management the opportunity to rectify an erroneous, arbitrary or unfair decision. The relevant provision cannot be interpreted to mean that management evaluation is optional. It is not.

7. In light of the fact that management evaluation is a mechanism established to enable management to review a contested decision, the question arises whether the result of that review is an administrative decision within the meaning of Article 2 of the UNDT Statute.

8. The Tribunal considers that the review by MEU is not an appealable administrative decision within the meaning of Article 2 of the UNDT Statute but rather a review of the original decision. Such a review may no doubt impact adversely on the terms of appointment or contract of employment of the staff member. This process, however, is not the end of the matter for a staff member as s/he can still contest the original decision to the Dispute Tribunal on its substantive merits and seek appropriate remedies.

Conclusions:

9. In light of the foregoing, the Tribunal concludes that the current application is not receivable.



Judge Vinod Boolell

Dated this 27th day of July 2010

Entered in the Register on this 27th day of July 2010



For

Jean-Pelé Fomété, Registrar, UNDT, Nairobi