



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2012/001

Judgment No.: UNDT/2012/070

Date: 10 May 2012

Original: English

Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

GEHR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Ingeborg Daamen-Mayerl, UNOV/UNODC

Introduction

1. By an application filed on 5 January 2012, the Applicant, a former staff member of the United Nations Office on Drugs and Crime (“UNODC”), challenges the decision of the Assistant Secretary-General for Human Resources Management not to conduct a fact-finding investigation following his report of prohibited conduct.

2. He asks the Tribunal to rescind the contested decision and to order that a fact-finding investigation be conducted. He also seeks compensation for the moral injury he suffered.

Facts

3. The Applicant, an Austrian national, joined UNODC in Vienna in 2002. With effect from 1 November 2007, he was appointed in the Terrorism Prevention Branch (“TPB”) within the Division of Treaty Affairs (“DTA”). His fixed-term appointment was extended several times until 31 December 2011, when he was separated from service.

4. From the fall of 2009, when a reorganization of TBP was announced, the relation between the Applicant and UNODC management deteriorated and the Applicant submitted a series of informal and formal complaints (see in particular *Gehr* UNDT/2011/142, *Gehr* UNDT/2011/150, *Gehr* UNDT/2011/178 and *Gehr* UNDT/2011/211).

5. On 28 November 2011, the Applicant submitted to the Assistant Secretary-General for Human Resources Management at the United Nations Headquarters in New York a written complaint in which he claimed to be the victim of harassment on the part of the UNODC Executive Director and the Officer-in-Charge of DTA. He alleged that the Executive Director had asked an official of the Austrian government to re-employ him so that he could be removed from UNODC and that the Officer-in-Charge of DTA had failed to respond to his

requests regarding the renewal of his appointment beyond its expiry on 31 December 2011.

6. By an email of 29 November 2011, the Officer-in-Charge of DTA informed the Applicant of the decision not to extend his appointment beyond 31 December 2011.

7. On 14 December 2011, the Assistant Secretary-General for Human Resources Management responded to the Applicant's complaint of 28 November that, in her view, there were not sufficient grounds to warrant a formal fact-finding investigation given that the Applicant had produced no evidence of his allegation concerning the UNODC Executive Director and that he had been duly notified of the decision not to renew his appointment.

8. On 5 January 2012, the Applicant filed with the Tribunal the application which forms the subject of the present Judgment.

9. A directions hearing was held on 18 April 2012, which the Applicant and Counsel for the Respondent attended by videoconference.

Parties' submissions

10. The Applicant's principal contentions are:

a. Staff rule 11.2 provides that "[a] staff member wishing to formally contest an administrative decision ... shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision". Since this provision only refers to staff members, it is to be inferred that former staff members are not required to undergo management evaluation prior to bringing their claims before the Tribunal;

b. The contested decision violated the Applicant's right to a proper investigation of his complaint;

c. The UNODC Executive Director contributed to the further deterioration of a hostile work environment and his behaviour constitutes harassment and abuse of authority.

11. The Respondent's principal contentions are:

It results from staff rule 11.2 and article 8 of the Statute of the Tribunal that a staff member who wishes to contest an administrative decision must, as a first step, submit the contested decision for management evaluation. As the Applicant failed to request a management evaluation of the contested decision in this case, his application is not receivable.

Consideration

12. This case raises the issue of whether the procedural requirement of a management evaluation applies to a former staff member who wishes to contest an administrative decision.

13. According to article 2.1 of the Tribunal's Statute, which was adopted by the General Assembly in its resolution 63/253 on 24 December 2008:

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General ...

14. Article 3.1 of the Statute specifies that:

An application under article 2, paragraph 1, of the present statute may be filed by:

(a) Any staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;

(b) Any former staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes ...

15. Article 8.1 further provides:

An application shall be receivable if ...

(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required ...

16. It follows from the above provisions that, for the purpose of admissibility, the procedural requirement of submission for management evaluation equally applies to staff members and former staff members. Therefore, under these provisions, irrespective of whether an applicant is a current or a former staff member of the United Nations, he or she must request a management evaluation prior to filing his or her application with the Dispute Tribunal.

17. Staff rule 11.2(a), for its part, states:

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.

18. At the directions hearing, the Applicant submitted that staff rule 11.2, if interpreted literally, exempts former staff members from requesting a management evaluation prior to filing an application with the Tribunal.

19. In addressing the inconsistency between a provision of its Statute and a staff rule, the Tribunal held in *Abu-Hawaila* UNDT/2010/102 (affirmed in *Abu-Hawaila* 2011-UNAT-118):

There is no question that the UNDT [S]tatute is legislation of higher level than the Staff Rules and that in case of contradiction or inconsistency, the former must prevail over the latter.

20. In *Villamorán* UNDT/2011/126, it further stated:

At the top of the hierarchy of the Organization's internal legislation is the Charter of the United Nations, followed by resolutions of the General Assembly, staff regulations, staff rules, Secretary-General's bulletins, and administrative instructions ...

21. Therefore, even assuming that staff rule 11.2(a), insofar as it is silent on whether a former staff member must request a management evaluation prior to filing an application with the Tribunal, contradicts the provisions of the Tribunal's Statute, the Tribunal is to assess the admissibility of the application only in light of its own Statute.

22. It is settled case law of both the Dispute Tribunal (see, *inter alia*, *O'Neill* UNDT/2010/203, *Leboeuf et al.* UNDT/2010/206, *Znamenski* UNDT/2010/208) and the Appeals Tribunal (see, *inter alia*, *Crichlow* 2010-UNAT-035 and *Planas* 2010-UNAT-049) that requesting a management evaluation is a mandatory first step in the appeal process.

23. Where the Staff Rules provide for exemptions from the requirement to request a management evaluation, these exemptions are related to certain types of administrative decisions and not to the status of the concerned individual. Staff rule 11.2(b) thus states:

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.

24. In the case at hand, the Applicant does not challenge an administrative decision for which he is exempted from the requirement to request a management evaluation.

25. It follows that the decision not to conduct a fact-finding investigation is not properly before the Tribunal and the application must accordingly be rejected as irreceivable.

Conclusion

26. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

(Signed)

Judge Thomas Laker

Dated this 10th day of May 2012

Entered in the Register on this 10th day of May 2012

(Signed)

René M. Vargas M., Registrar, Geneva