



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2011/052

Judgment No.: UNDT/2012/148

Date: 9 October 2012

Original: English

Before: Judge Goolam Meeran

Registry: New York

Registrar: Hafida Lahiouel

KRATSCHMER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Christine Graham, ALS/OHRM, UN Secretariat

Introduction

1. On 20 June 2011, the Applicant, who previously worked as Regional Administration Officer with the United Nations Integrated Mission in Timor-Leste (“UNMIT”), filed an application with the Dispute Tribunal in New York, complaining that his former First Reporting Officer (“FRO”) had not submitted a “Special Report” on him for the period 22 October 2010 to 30 April 2011. The Applicant filed this claim in the expectation that the Tribunal would order UNMIT to discuss with him his performance during this period and to provide him with a “Special Report” as well as to reinstate him in his former post so that this could be done. The Applicant agrees that he had not requested management evaluation.

2. The Respondent’s motion to have the receivability of the application considered as a preliminary issue was granted and the Applicant was ordered to file and serve a submission in which he explained his reasons for not requesting management evaluation of the “decision” in question. The Applicant’s response, in essence, was that his application was receivable because:

- a. He was not contesting an administrative decision but requesting, as relief, that the Special Report in respect of the period from 22 October 2010 to 30 April 2011 be discussed with him and issued;
- b. That he was not a current, but a former, staff member so he was not required to submit a request for management evaluation.

Facts

3. In his application, the Applicant describes the factual background of his case as follows:

... From 01 April 2010 to 30 April 2011, [the Applicant] was performing duties as Regional Administration Officer and Area

Security Coordinator for Bobonaro Region in East Timor. The relevant [electronic performance assessment system (“e-PAS”) report] for the cycle 2010-11 was followed up by all concerned in accordance with established instructions.

... Due to the departure of [the FRO] ... [the Applicant’s e-PAS report] for the cycle 2010-11 was finalized on 21 October 2010. The [e-PAS report] was signed and commented on by the Second Reporting Officer ... as [Office-in-Charge (“OIC”)] Mission Support the same day. [The Applicant] signed off on 23 October 2010.

... With the departure of the FRO, [the Applicant] assumed additional duties as OIC Regional Administration Unit but remained at [his] duty station in Maliana.

... With effect from 30 April 2011, [the Applicant has] been separated from service due to reaching the Mandatory Retirement Age.

... To date, no Special Report for the period in question has been received from the First Reporting Officer (UNMIT).

4. The Respondent’s submissions were limited to the question of the receivability of the application.

Consideration

5. Pursuant to art. 8 of the Statute of the Dispute Tribunal, read together with staff rule 11.2(a), an applicant must, as a mandatory first step, request management evaluation of a contested decision before filing an application with the Dispute Tribunal (see the United Nations Appeal Tribunal (“UNAT”) in *Planas* 2010-UNAT-049, para. 23). The purpose of such management evaluation is primarily to allow the management to review, and possibly correct, an administrative decision, which an individual concerned wishes to challenge, and thereby avoid unnecessary litigation before the Dispute Tribunal.

6. It is specifically provided, under staff rule 11.2(b), that an applicant is not required to request management evaluation of decisions taken by “technical bodies” as determined by the Secretary-General, or if the decision imposes a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following the completion of a

disciplinary process. None of the circumstances described in staff rule 11.2(b) is applicable to the Applicant's case.

7. Under art. 3.1(b) of the Dispute Tribunal's Statute, the Applicant may, as a former staff member of the United Nations, file an application with the Dispute Tribunal. However, no special exception is made for former staff members that releases the Applicant from the requirement that he must first request management evaluation before he files his application with the Dispute Tribunal.

8. The Applicant contends that he is not required to request a management evaluation before filing his application because he is not contesting an administrative decision. He is requesting that such a decision should be taken concerning the Special Report.

9. In order to have a case considered by the Dispute Tribunal, the individual concerned may file an application to "appeal an administrative decision that is alleged to be in non-compliance with [her or his] terms of appointment or the contract of employment" pursuant to art. 2.1(a) of the Tribunal's Statute.

10. However, a contestable decision may also arise when the Administration fails, or omits, to take proper action where an applicant can define a right for her or him to have such action be taken (see, for instance, *Tabari* 2010-UNAT-030). This is clearly what the Applicant wants the Tribunal to do in the present case, namely ordering UNMIT to take certain action with regard to the Special Report. Even if failure to do so may be a challengeable administrative decision, it does not absolve the Applicant from the obligation to first request management evaluation of. He did not do so.

11. The Tribunal finds no grounds for excusing the Applicant from his obligation to first request management evaluation before filing his application with the Dispute Tribunal.

Conclusion

12. The application is not receivable and is dismissed in its entirety.

(Signed)

Judge Goolam Meeran

Dated this 9th day of October 2012

Entered in the Register on this 9th day of October 2012

(Signed)

Hafida Lahiouel, Registrar, New York