



**Before:** Judge Thomas Laker

**Registry:** Geneva

**Registrar:** René M. Vargas M.

MEHRABI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**SUMMARY JUDGMENT**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Christine Graham, ALS/OHRM, UN Secretariat

## **Introduction**

1. By application filed on 12 January 2015, the Applicant, a staff member of the United Nations Assistance Mission in Afghanistan (“UNAMA”) contests “[his supervisor having] recently made some negative comments about [his] performance, recommending terminating [his] contract with UNAMA”.

2. In his application, the Applicant describes a situation at work where he received some negative feedback on his performance by his supervisor, through the ePerformance, including a performance improvement plan. He expresses his concern that the way he was treated by his supervisor was unethical and unfair.

3. Although in response to an email he had sent on 11 January 2015, the Applicant was asked by the Registry on 12 January 2015 to file a completed application form through its electronic eFiling system, with supporting documents, including the contested decision and a request for management evaluation, the Applicant did not submit such supporting documents when he filed the present application later that day.

## **Consideration**

4. Article 9 of the Tribunal’s Rules of Procedure provides:

### **Summary judgement**

A party may move for summary judgement when there is no dispute as to the material facts of the case and a party is entitled to judgment as a matter of law. The Dispute Tribunal may determine, on its own initiative, that summary judgement is appropriate.

5. An examination of the application leads to raising the question of its receivability *rationae materiae*, which may be assessed as a matter of law even if not raised by the parties and even without serving the application to the Respondent (see *Gehr* 2013-UNAT-313; *Christensen* 2013-UNAT-335). Therefore, the Tribunal finds that a summary judgment is appropriate.

6. The scope of the Tribunal's jurisdiction is clearly determined and limited by art. 2.1(a) of its Statute, which provides:

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

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment.

7. Moreover, staff rule 11.2(a), on Management evaluation, provides:

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.

8. Additionally, art. 8.1(c) of the Tribunal's Statute stipulates that an application shall only be receivable if the applicant has previously submitted the contested administrative decision for management evaluation, where required.

9. The Tribunal recalls that as per art. 2.1(a) of its Statute, quoted above, for an application to be receivable, the contested decision has to be an "administrative decision" under the provisions of the Tribunal's Statute. The Appeals Tribunal has adopted the definition of an administrative decision (see *Al Surkhi et al.* 2013-UNAT-304), as developed by the former Administrative Tribunal in *Andronov* (Judgment No. 1157 (2003)):

It is acceptable by all administrative law systems, that an administrative decision is a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact

that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences.

10. The Applicant challenges some “negative comments” his supervisor allegedly made in his performance evaluation and a recommendation to terminate his contract. Even if such negative comments and an alleged recommendation to terminate the Applicant’s appointment were made, they do not constitute administrative decisions as per the above definition, since they do not carry any direct legal consequences. Therefore, in the absence of an administrative decision, the present application is not receivable *ratione materiae*.

11. In addition, it is obvious from the Applicant’s submission that he did not request management evaluation of what he wants to contest. Failure to follow the established procedure also renders the application irreceivable.

12. The foregoing is without prejudice to the possibility for the Applicant to file a new application with the Tribunal at a later stage, should he receive an administrative decision that he can contest, and after having properly gone through the management evaluation process, if so required.

### **Conclusion**

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

The application is rejected.

*(Signed)*

Judge Thomas Laker

Dated this 15<sup>th</sup> day of January 2015

Entered in the Register on this 15<sup>th</sup> day of January 2015

*(Signed)*

René M. Vargas M., Registrar, Geneva