



Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Hafida Lahiouel

AUDA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant, a former United Nations staff member with the Department for General Assembly and Conference Management, filed an application in which he contests “[t]he decision of the Management Evaluation Unit [“MEU”], Office of the Under-Secretary-General (OUSG), Department of Management [“DM”], to send a letter of acknowledgment including misleading representations with regard to deadlines for filing an appeal before the [Dispute Tribunal] pursuant to an Applicant’s request for management evaluation.”

2. In response, the Respondent filed a motion for summary judgment, submitting that the application is not receivable *ratione materiae* as it does not concern an appealable decision. As a preliminary issue, the Tribunal will examine this matter, notably whether the impugned alleged decision is a type of decision over which this Tribunal has jurisdiction and therefore competence under the Dispute Tribunal Statute.

Facts

3. On 29 July 2016, the Applicant filed his application in which he summarised the facts of the case as follows:

- ... On 16 June 2016, the Applicant requested a management evaluation of the decision of the Under-Secretary-General, DM, not to cancel then make a selection pursuant to Job Opening number 15-IST-OICT-41653-R-NEW YORK (R) for the defunct position of Chief of Service (DI), Strategic Information and Communication Technology Management, in the Office of Information and Communications Technology (OICT) [“the selection decision”].
- ... On the same day, 16 June 2016, the MEU responded:
“We have received the below request for a management evaluation.”
- ... The Applicant in turn responded instantly:

“Thank you for your email. Grateful for your clarification if responding by email is now the method of confirmation the MEU is using in place of its previous formal notification letter!”

... Later on the same day, the MEU responded:

“Once we have completed the in-processing of the case, we will send you an acknowledgement letter.”

... On 17 June 2016, the MEU sent a letter of acknowledgement, and, shortly afterwards, another, corrected letter of acknowledgment. Both letters were copied widely, including to the MEU interns [...].

... On 20 June 2016, the Applicant submitted a request for management evaluation of the MEU decision to send a letter of acknowledgment including misleading representations with regard to deadlines for filing an appeal before the UNDT [...]. The MEU has not responded to the request of evaluation or even acknowledged it.

4. Together with the 17 June 2016 acknowledgement letter from the MEU, the Applicant filed an email exchange between him and the MEU regarding said acknowledgement letter and a letter dated 25 July 2016 from the MEU and addressed to the Applicant by which he was notified that a request for management evaluation that he had made regarding a request for interim measures was not receivable.

5. On 2 August 2016, the Registry acknowledged receipt of the application of 29 July 2016 and transmitted it to the Respondent instructing him to file his reply by 1 September 2016 pursuant to art. 10 of the Dispute Tribunal Rules of Procedure.

6. On 3 August 2016, the Respondent filed a motion for summary judgment, submitting, *inter alia*, that “[t]he Application is manifestly inadmissible and should be decided by way of summary judgment”. The Respondent provided details about a 23 June 2016 application from the Applicant challenging the selection decision (Case No. UNDT/NY/2016/028).

Consideration

Receivability

7. It is the consistent jurisprudence of the Appeals Tribunal that under its Statute and Rules of Procedure, the Dispute Tribunal is competent to review its own jurisdiction even if this is not contested by any of the parties (see, for instance, *O'Neill* 2011-UNAT-182, *Christensen* 2013-UNAT-335, and *Tintukasiri et al.* 2015-UNAT-526). When reviewing the application and the motion for summary judgment, the Tribunal, therefore, also examines whether the application is receivable and if the Tribunal may rule upon this issue without first receiving a reply from the Respondent in accordance with art. 10.4 of the Dispute Tribunal Rules of Procedure and proceed with issuing a summary judgment in accordance with art. 9 of the Rules of Procedure (similarly, see *Kalpokas Tari* UNDT/2013/180 and *Ibom* UNDT/2014/084).

8. Article 2.1 of the Dispute Tribunal Statute defines the types of administrative decisions that the Tribunal is competent to review and, of relevance to the present case, provides that:

1. 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 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. The terms “contract” and “terms of appointment” include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged noncompliance

9. Pursuant to staff rule 11.2(a), before appealing such an administrative decision to the Dispute Tribunal, an applicant “shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.” In accordance with staff rule 11.2(b), the only exceptions to this prerequisite are if the impugned administrative decision is “taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General, or

[is] 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.”

10. It follows from art. 7.1 of the Dispute Tribunal Rules of Procedure regarding the time limit for filing applications that:

1. Applications shall be submitted to the Dispute Tribunal through the Registrar within:

- (a) 90 calendar days of the receipt by the applicant of the management evaluation, as appropriate;
- (b) 90 calendar days of the relevant deadline for the communication of a response to a management evaluation, namely, 30 calendar days for disputes arising at Headquarters and 45 calendar days for disputes arising at other offices; or
- (c) 90 calendar days of the receipt by the applicant of the administrative decision in cases where a management evaluation of the contested decision is not required.

11. Regarding the 90-day deadline, staff rule 11.4(a) further provides that:

(a) A staff member may file an application against a contested administrative decision, whether or not it has been amended by any management evaluation, with the United Nations Dispute Tribunal within 90 calendar days from the date on which the staff member received the outcome of the management evaluation or from the date of expiration of the deadline specified under staff rule 11.2 (d), whichever is earlier.

12. Staff rule 11.2(d) states that:

The Secretary-General’s response, reflecting the outcome of the management evaluation, shall be communicated in writing to the staff member within 30 calendar days of receipt of the request for management evaluation if the staff member is stationed in New York, and within 45 calendar days of receipt of the request for management evaluation if the staff member is stationed outside of New York. The deadline may be extended by the Secretary-General pending efforts for informal resolution by the Office of the Ombudsman, under conditions specified by the Secretary-General.

13. In the present case, the Applicant is contesting how the Officer-in-Charge of the MEU presented a 90-day deadline in the 17 June 2016 acknowledgement letter for the Applicant to file an application to the Dispute Tribunal regarding the selection decision. In this letter, the MEU stated that (emphasis in original):

Please also note that, pursuant to Staff Rule 11.2 (d), the management evaluation in your case is to be completed within 30 days of receipt of your request, or no later than **16 July 2016**. If there is any delay in completing the management evaluation, the MEU will contact you to so advise. In any event, please be advised that, pursuant to Staff Rule 11.4 (a), the 90-day deadline for filing an application to the UNDT, should you wish to do so, will start to run from **16 July 2016**, or the date on which the management evaluation was completed, if earlier, unless the deadline has been extended by the Secretary-General to facilitate efforts for informal resolution under the auspices of the Office of the Ombudsman.

14. Pursuant to art. 7 of the Dispute Tribunal Rules of Procedure, the entity to decide on whether the Applicant has complied with the 90-day deadline for filing an application to the Dispute Tribunal, including any question related to the information provided by the MEU in 17 June 2016 acknowledgement letter, is the Dispute Tribunal Judge in charge of the case regarding the selection decision. It further follows from the facts that the Applicant has actually filed an application concerning this decision with the Dispute Tribunal (Case No. UNDT/NY/2016/028) and the case is, therefore, already pending before the Dispute Tribunal.

15. Accordingly, the present Tribunal does not have jurisdiction and is not competent to assess and adjudicate on the question contested by the Applicant. Since the facts are clear from the application and the motion for summary judgment, the Tribunal grants the motion and it is not necessary for the Respondent to file a reply.

Conclusion

16. The application is rejected as not receivable *ratione materiae*.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 10th day of August 2016

Entered in the Register on this 10th day of August 2016

(Signed)

Hafida Lahiouel, Registrar, New York