



Before: Judge Goolam Meeran

Registry: Nairobi

Registrar: Abena Kwakye-Berko

KARAMBIZI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:

Nicole Nyamai

Counsel for the Respondent:

ALS/OHRM

INTRODUCTION

1. On 3 January 2018, the Applicant, a former staff member with the United Nations Interim Security Force for Abyei (“UNISFA”), filed an application in which he contests the decision to place a note on his Official Status File (“OSF”).

2. It is the Applicant’s case that his due process rights were not respected during the investigation phase and as such, placement of a note in his OSF would be unlawful.

BACKGROUND FACTS

3. By a memorandum dated 1 November 2017, the Assistant Secretary-General for Field Support (“ASG/DFS”) referred a report of possible misconduct by the Applicant to the Assistant Secretary-General for Human Resources (“ASG/OHRM”) for action.

4. By letter dated 5 December 2017, the Chief of the Disciplinary Unit of the Administrative Law Section, Office of Human Resources Management, informed the Applicant that since he had separated from service prior to the resolution of the allegations against him, a note would be placed on his OSF to this effect. He was provided with a copy of the note and the investigation report and given four weeks within which to provide his comments on the note. He was further informed that after the four-week period, the note and his comments would be placed on his OSF.

5. On 3 January 2018, the Applicant filed the current application with the Dispute Tribunal.

CONSIDERATIONS

6. Pursuant to article 8.4 of the UNDT Rules of Procedure, the Registrar “shall transmit a copy of the application to the respondent and to any other party a judge considers appropriate” after ascertaining that the application complies with articles 8.1 to 8.3 of the Rules of Procedure.

7. The Tribunal has, on several occasions, considered matters of admissibility or receivability on a priority basis without first transmitting a copy of the application to the Respondent or awaiting the Respondent's reply before taking action to consider the claim.¹

8. After a review of the application and its supporting documents, the Tribunal has decided that this claim can be determined on a priority basis without first transmitting a copy of the application to the Respondent for a response.

9. Under article 8.1(c) of the UNDT Statute, the jurisdiction of the Dispute Tribunal can only be invoked if the contested administrative decision has previously been submitted for management evaluation. Staff rule 11.2(a) provides that a staff member wishing to formally contest an administrative decision is required to submit a written request for management evaluation to the Secretary-General. Such a request is a mandatory first step for an applicant prior to the submission of an application to the Dispute Tribunal. It is not open to the Tribunal to waive this requirement or make any exception to it.²

10. The Applicant indicates that he has not requested management evaluation of the decision he is contesting. In the circumstances his application is premature. However, he may, if he still wishes to contest the matter, submit a request for a management evaluation of what he considers to be an unlawful administrative decision.

11. The Tribunal makes no comment on the merits or otherwise of the substantive complaint which will be adjudicated on its merits if, or when, a receivable claim is made

JUDGMENT

The application is dismissed.

¹ See *Hunter* UNDT/2012/036, *Milich* UNDT/2013/007, *Masyllkanova* UNDT/2013/033, and *Kalpokas Tari* UNDT/2013/180.

² *Samardzic* 2010-UNAT-072, *Trajanovska* 2010-UNAT-074, *Ajdini* 2011-UNAT-108.

(Signed)

Judge Goolam Meeran

Dated this 5th day of January 2018

Entered in the Register on this 5th day of January 2018

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi