



Before: Judge Margaret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye-Berko

KEBEDE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Lanla Kamara, ECA

Background

1. On 20 December 2019, the Applicant filed an application contesting what he describes as the United Nations Economic Commission for Africa's ("ECA") decision not to intervene in his case for compensation for additional financial tasks undertaken from October 2007 to February 2017 as part of his functions as Team Assistant, Office of the Staff Union. The Applicant states that the decision was taken on 21 August 2019 by ECA's Chief of the Human Resource Services Section ("HRSS").

2. The Respondent filed a reply on 27 January 2020 in which it is argued that the application is not receivable *rationae materiae* and *ratione temporis*.

Relevant facts

3. The Applicant joined ECA on 8 October 2007 as a Team Assistant in the Office of the Staff Union of ECA.¹

4. On 29 July 2017, the Applicant requested the Office of the Staff Union to grant him compensation for the financial tasks and duties that he had been fulfilling during the period October 2007 to February 2017 because they exceeded the basic finance-related tasks of a Team Assistant at the G-4 level. He also made claims for half pay during his annual leave because he had to work from home during that period and for compensation for the moral damages that he had suffered due to unwarranted emails dated 11 April 2017 and 4 July 2017. Finally, he requested for a transfer to another division within ECA.²

5. On 11 December 2017, the Office of the Staff Union informed the Applicant that they could accommodate his request to transfer him to another division but refused his other requests, that is, for: his work related to financial functions that he performed from October 2007 to February 2017; for the time that he worked whilst he was on

¹ Reply, annex 1.

² Application, annex 5.

annual leave; and for moral damages.³ He was specifically informed that:

- a. the Staff Union did not have the mandate nor was it able to grant compensation for the finance functions he undertook and that he should contact the ECA/HRSS regarding such contractual matters;
- b. the Staff Union was unable to retroactively approve his annual leave for past years and did not have the mandate to grant compensation for that leave on behalf of ECA and that he should contact ECA/HRSS regarding such contractual matters;
- c. the Staff Union was unable to compensate him for his psychological treatment or moral damages; and
- d. that ECA/HRSS was reviewing his request for a transfer and that the Staff Union was supportive and working with them on the issue.

6. On 4 February 2019, the Applicant requested management evaluation of the 11 December 2017 decision denying his requests.

7. By letter dated 14 February 2019, the Management Evaluation Unit (“MEU”) determined that his request was not receivable because the MEU does not have the authority to review management evaluation requests regarding matters of the Office of the Staff Union.⁴

8. On 21 June 2019, the Applicant addressed an email to Mr. Sajiv Nair, ECA’s Chief/HRSS requesting the ECA Administration to consider his claims (as described at para. 4 above).⁵

9. Mr. Nair responded to the Applicant on 21 August 2019 informing him that his case had been discussed in detail, that he had been provided responses by his

³ Application, annex 5.

⁴ Reply, annex 2.

⁵ Application, annex 7.

supervisors regarding his grievances and that there was nothing further to add.⁶

10. On 2 September 2019, the Applicant requested management evaluation of the ECA's decision not to intervene in his case for compensation. On 19 September 2019, MEU determined that his request was not receivable because it was a restatement of the 4 February 2019 request.⁷

Considerations

11. The Respondent maintains that since the complaint is based on actions and decisions of the Office of the Staff Union of ECA, the Dispute Tribunal does not have general jurisdiction to review or supervise internal union affairs, and so the application is not admissible.

12. The Applicant asserts that he was appointed by the ECA and the decision he is now challenging is not that of the Staff Union but that of the ECA not to intervene in the matter and to provide him compensation. He further argues that the Administration has an obligation to treat every staff member fairly but has rejected his request without giving it due consideration. This is evidenced by the fact that his request to ECA/HRSS to transfer him out of the Staff Union as one of his reliefs was cursorily dismissed.

Legal Frame work

13. The Tribunal's jurisdiction over administrative decisions is derived from art. 2.1 of its Statute which provides that the Tribunal shall be competent to hear and pass judgment on an application filed by an individual against the Secretary-General to appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment.

14. In the Tribunal's jurisprudence, applications which do not challenge appealable administrative decisions are not receivable *ratione materiae*. A contestable

⁶ Ibid.

⁷ Application, annex 8.

administrative decision is one which produces a sufficiently direct legal consequence to the legal order of the Applicant as a staff member. It must be based on direct organisational authority, and must not concern an area protected from employer interference⁸. It must constitute a unilateral decision taken by the Administration in a precise individual case which produces direct legal consequences to the legal order.

15. An application in which the applicant contested the Secretary-General's refusal to conduct an investigation into irregularities surrounding the United Nations Staff Union elections was held not to have been within the jurisdiction of this Tribunal because Staff Unions are independent in their operations, and so, the Secretary-General does not have jurisdiction to review or supervise their internal affairs.⁹

16. The issue in this case is whether the Respondent's decision not to intervene in the Applicant's case for compensation for additional financial tasks undertaken from October 2007 to February 2017 as part of his functions as Team Assistant, Office of the Staff Union constituted an administrative decision.

17. The Tribunal notes that the contested decision is similar in nature and effect to the contested decision in *Hassanin*¹⁰ which the Tribunal found not to be receivable. The contested decision in this case is clearly not based on direct organisational authority and it concerns an area protected from employer interference, the internal affairs of a Staff Union. It does not produce a sufficiently direct legal consequence to the legal order of the Applicant as a staff member.

18. The Tribunal notes the Staff Union's opinion expressed in the letter to the Applicant¹¹ that it has no mandate and is unable to grant him compensation for the financial functions he undertook and that he should contact the ECA/HRSS regarding all his claims. The Staff Union's opinion is however taken for what it is, just an opinion. Crucially, if this application is evaluated against the Applicant's capacity as an

⁸ *Hassanin*, Order No. 139 (NY/2011).

⁹ *Saffir*, UNDT/2013/109.

¹⁰ Order No. 139 (NY/2011).

¹¹ Application, annex 5.

employee of the Staff Union, the Tribunal cannot but find that the application for compensation and transfer from the Office of the Staff Union to other Divisions or sections of ECA (the remedies he seeks against the Respondent) fails for being internal affairs of the Staff Union.

Conclusion

19. The Tribunal has no jurisdiction over the application and it is rejected.

(Signed)

Judge Margaret Tibulya

Dated this 28th day of May 2020

Entered in the Register on this 28th day of May 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi