



Before: Judge Francesco Buffa

Registry: Geneva

Registrar: René M. Vargas M.

CHOCOBAR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, AAS/ALD/OHRM, UN Secretariat

Introduction

1. As per the application filed before the Tribunal, the Applicant contests the decision not to provide her with a workplan within the deadlines established in ST/AI/2010/5 (Performance Management and Development System) and the Administration's failure to comply with a "Strictly Confidential Organizational Agreement".

Facts and procedural background

2. On 13 June 2014, the Applicant entered into a settlement agreement with the Department of Field Support, by which, *inter alia*, she committed to withdraw six applications that, at the time, were pending before this Tribunal and accepted her reassignment to a vacant position (Administrative Officer, P-4 level) at the United Nations Global Service Centre, United Nations Logistics Base, ("UNGSC") in Brindisi, Italy, under a one-year fixed-term appointment.

3. A second Settlement Agreement, reached through the auspices of the United Nations Ombudsman and Mediation Services, was signed on 21 July 2017 by the Applicant and the Director, UNGSC. This Agreement called for the amicable resolution of "past, present and future claims in respect of, arising from, connected with, or in any way relating to the matters ... concerning [the Applicant's] reassignment within UNGSC and other matters".

4. On 28 March 2018, the Applicant filed a request for management evaluation alleging the Administration's breach of the second Settlement Agreement by not providing her with a work plan and not assigning her roles and responsibilities commensurate with her grade, level and knowledge.

5. By letter dated 16 May 2018, the Management Evaluation Unit ("MEU") responded to the Applicant informing her that her request was not receivable as she had not followed the provision for conflict resolution stipulated in the second Settlement Agreement, which called for her seeking assistance for conflict resolution from the United Nations Ombudsman and Mediation Services.

6. On 28 May 2018, the Applicant filed a new request with the MEU requesting evaluation of their “Non-Receiveable” decision.

7. By letter dated 18 June 2018, the MEU responded to the Applicant advising her that her 28 May 2018 request was also not receivable as the contested decision “does not constitute a contestable administrative decision within the meaning of Staff Rule 11.2 (a)”.

8. On 8 August 2018, the Applicant completed the application referred to in para. 1 above, which she had initially filed on 3 August 2018, and it was served on the Respondent.

9. In his reply, filed on 10 September 2018, the Respondent *inter alia* raised the issue of the application’s receivability *ratione materiae*.

10. By Order No. 48 (GVA/2020) of 9 April 2020, the Tribunal informed the parties of its finding that the matter could be determined on the papers without holding a hearing, and ordered the parties to file their closing submissions, which they did on 12 June 2020. In that Order, the Applicant was also instructed to include in her closing submission her response to the Respondent’s arguments on the issue of the application’s receivability.

Consideration

11. The Tribunal will first examine the issue of receivability *ratione materiae* raised by the Respondent.

12. With respect to the Applicant’s claim that she was not provided with a workplan for the 2017-2018 performance cycle “within established deadlines”, the Tribunal finds that the failure to provide a workplan does not constitute an administrative decision under Article 2(1)(a) of its Statute. The Applicant challenges a preliminary step in the performance management process for the 2017-2018 performance cycle, which as per her closing submission is still ongoing and seems to be at the rebuttal stage (see *Kamanou* UNDT/2012/059). Furthermore,

the Applicant conceded in her closing submission that her 2017-2018 performance evaluation has not resulted in any administrative decision.

13. Concerning the Applicant's claim that the Organization did not act in compliance with a "Strictly Confidential Organizational Agreement", although the claim is not well specified, it seems that the non-compliance is essentially related to the tasks assigned to the Applicant and to the lack of an adequate workplan. This allegation faces the same receivability issue as above.

14. The Tribunal also finds that the application in respect of the alleged non-compliance with the second agreement is premature, and as such not receivable, because the Applicant has not followed the mandatory dispute resolution process contained in the settlement agreement concluded in July 2017.

15. Finally, as pointed out by the Respondent, the Applicant's multiples and generic complaints that the Organization has failed to follow its own rules and procedures, and her assertions regarding the conduct of her current and former reporting officers at UNGSC do not constitute administrative decisions under Article 2(1)(a) of the Tribunal's Statute.

Conclusion

16. In view of the foregoing, the Tribunal DECIDES to dismiss the application as not receivable *ratione materiae*.

(Signed)

Judge Francesco Buffa

Dated this 4th day of August 2020

Entered in the Register on this 4th day of August 2020

(Signed)

René M. Vargas M., Registrar, Geneva