



Before: Judge Alexander W. Hunter, Jr.

Registry: Geneva

Registrar: René M. Vargas M.

RICHARDS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT
ON RECEIVABILITY**

Counsel for Applicant:

Marcos Zunino, OSLA

Counsel for Respondent:

Miriana Belhadj, UNOG

Introduction

1. On 14 March 2020, the Applicant, a staff member of the Office of the United Nations High Commissioner for Human Rights (“OHCHR”) filed an application to contest the decision not to award him compensation for harm caused by the irregularities vitiating the investigation process following his complaint of misconduct.

2. The Respondent replied that the application is not receivable and, in any event, without merit.

3. Having reviewed the evidence in this case along with the parties’ submissions, the Tribunal finds that the application is not receivable *ratione materiae*.

Relevant facts

4. On 31 January 2017, the Applicant filed a complaint of misconduct under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) with the Under-Secretary-General for Humanitarian Affairs/Emergency Relief Coordinator.

5. On 19 May 2017, the Applicant was notified that a fact-finding panel had been formed to investigate the allegations in his complaint.

6. On 27 June 2019, the Assistant Secretary-General for Human Resources (“ASG/OHRM”) notified the Applicant that the staff member subject of the complaint had received a disciplinary sanction.

7. On 22 November 2019, the Applicant wrote to the Chief of the Administrative Law Section (“Chief/ALS”) stating that he was “looking for guidance on the procedure for requesting compensation”. He went on to provide an outline of the process following his complaint of misconduct and closed by stating that he “would be enormously grateful to receive [the Chief/ALS’s] guidance in this matter and please forward as necessary”.

8. On 31 December 2019, ALS responded that they were “not in a position to advise [the Applicant] on the request for compensation from the Organization” and was directed to contact the Office of Staff Legal Assistance (“OSLA”) for assistance.

9. On 8 January 2020, the Applicant requested management evaluation of ALS’s email of 31 December 2019.

10. On 14 January 2020, the Management Evaluation Unit (“MEU”) rejected the request for management evaluation stating that it was not receivable because it had been filed more than 60 days after the Applicant had been notified of the outcome of his complaint. Moreover, the MEU did not consider that the ALS email of 31 December 2019 constituted an administrative decision.

Consideration

11. As the Respondent objects to the application’s receivability, the Tribunal will address this issue as a preliminary matter.

12. The Respondent states that the 31 December 2019 email is not an administrative decision because the Applicant’s 22 November 2019 email could not have reasonably been considered a request for compensation, be it formal or informal, since the Applicant indicated that he was seeking guidance on the procedure for requesting compensation. The Administration cannot be expected to interpret a clear message differently. As a consequence, the 31 December 2019 reply to the 22 November 2019 email does not contain any answer to whether or not the Applicant is entitled to compensation.

13. The Respondent further argues that given that the Applicant requests compensation for the alleged irregularities in the handling of his complaint of misconduct, he should have directed his application about the notification of the outcome of the investigation. The Respondent contends that the Applicant failed to request compensation within the statutory deadline, that is, within 60 days of the notification of the outcome of the decision on 27 June 2019.

14. The Applicant responds that his 22 November 2019 email clearly mentioned that he was seeking compensation and therefore the 31 December 2019 response from the Administration was an implied decision rejecting his claim.

15. Moreover, the Applicant contends that his request for compensation for the damages caused by the irregularities in the handling of his complaint of misconduct is separate from the outcome of the complaint, and therefore the deadline for seeking compensation is not set by the date in which the outcome of the complaint was communicated to him.

16. The Tribunal concurs with the Respondent that the Applicant's 22 November 2019 email could not have reasonably been construed as a request for compensation. The Applicant, a staff member in the professional category, clearly stated that he was seeking guidance as to the available procedures to request compensation for the harm caused by the irregularities in the handling of his complaint in order to effectuate such request for compensation. The Administration cannot reasonably be expected to second-guess a message that is unequivocal in its wording. The 31 December 2019 response from ALS cannot therefore be interpreted as a rejection of a request for compensation as no such request was put before the Administration.

17. The application is therefore not directed against an administrative decision in the sense of art. 2.2 of the Tribunal's Statute.

18. Moreover, the Tribunal finds that the deadline for the Applicant's request for compensation for any alleged irregularity in the handling of his complaint of misconduct started when he was notified of the outcome of the complaint.

19. The process of reviewing his complaint started on 21 January 2017, when the Applicant filed his complaint of misconduct and was concluded on 27 June 2019 when the responsible official, that is, the ASG/OHRM, formally notified him of the outcome of the process.

20. The 27 June 2019 notification rendered the decision resulting from the Applicant's complaint final and therefore reviewable under art. 2.1(a) of the Tribunal's Statute. Consequently, the notification date starts the clock running for any challenge of such administrative decision.

21. Therefore, under staff rule 11.2(c), the Applicant had 60 days to request management evaluation of the contested administrative decision as of the date of the notification of the outcome of his complaint, that is, as of 27 June 2019. As he only requested management evaluation on 8 January 2020, the Applicant missed the deadline and the application is therefore not receivable *ratione materiae*.

22. As a final consideration, the Tribunal notes that on 16 February 2021, the Applicant filed a motion under seal seeking leave to adduce evidence of harm which included a number of annexes containing confidential medical information. The Applicant further requested that his name be anonymized in the judgment and all published orders in this case given the confidential nature of the medical information provided in support for the 16 February 2021 motion.

23. The Tribunal has found the application not to be receivable. There is, therefore, no need to review evidence on remedies. Accordingly, the Applicant's request to introduce evidence of harm is rejected. To ensure the transparency of the proceedings, however, the 16 February 2021 motion shall be disclosed to the Respondent. Given that the information contained in the supporting annexes has not been considered in the determination of this matter and is personal and confidential in nature, the Tribunal finds that the annexes to the 16 February 2021 motion shall remain *ex parte*.

24. Finally, the Tribunal notes that the Applicant's request for anonymity is based on the fact that he provides confidential medical information in support of his request for compensation. The Tribunal not having considered the matter of compensation in this case, there is no reason to support the request for anonymity which is therefore denied.

Conclusion

25. In view of the foregoing, the Tribunal DECIDES:
- a. The application is dismissed as not receivable;
 - b. The Applicant's request for submission of evidence of harm is denied; and
 - c. The Applicant's request for anonymity is denied.

Judge Alexander W. Hunter, Jr.

(Signed)

Dated this 23rd day of February 2021

Entered in the Register on this 23rd day of February 2021

(Signed)

René M. Vargas M., Registrar, Geneva