



Before: Judge Eleanor Donaldson-Honeywell

Registry: Nairobi

Registrar: Abena Kwakye-Berko

HANJOURY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT

ON RECEIVABILITY

Counsel for the Applicant:

Edwin Nhliziyo

Counsel for the Respondent:

AAS/ALD/OHR, UN Secretariat

Introduction

1. By application filed on 11 September 2021, the Applicant, who served as an Administrative Assistant at the FS-4 level with the United Nations Interim Security Force for Abyei (“UNISFA”), filed an application with the United Nations Dispute Tribunal in Nairobi to contest her de-rostering for FS-5 positions in the Claims Assistant and Administrative Assistant category.

Facts

2. The Applicant applied for an FS-5 Claims Assistant position in 2010, which was then associated with an FS-5 Administrative Assistant position. She was rostered for both positions in 2010. She has remained in her FS-4 position for several years thereafter.

3. In 2017, she was asked to move to a new duty station as a lateral move but made it clear that she was interested in an FS-5 Administrative Assistant position since she had been rostered for same for seven years. She was then surprised to be told that she was no longer cleared for that position (she no longer had the clearance of the Field Central Review Board).

4. The Applicant made enquiries about this change of circumstances for a period of three years. She asserts that she then realized there was no intention on the part of the Administration to restore her to the FS-5 roster for the position.

5. In her application, the Applicant speculates that her removal from the roster was by virtue of a glitch some time in 2017. However, she refers to a document annexed as A/2 to her application and states that on 1 March 2020 it became apparent to her that she was no longer on the roster for the position.

6. The Applicant filed her request for management evaluation on 6 June 2021, which was about one year after she was notified of the impugned decision. On 14 July 2021, the Management Evaluation Unit (“MEU”) found that the request for management evaluation was not receivable.

7. MEU's explanation for deeming the Applicant's request not receivable was that the subject matter complained about in the request did not include an administrative decision for purposes of staff rule 11.2(a). This was because the change of rostering status complained of did not involve a final decision taken with direct legal consequences for the Applicant's rights and obligations. Rather, there was a decision in 2017 to disassociate the FS-5 Claims Assistant and Administrative Assistant positions. The Applicant's de-rostering from the position of Administrative Assistant at FS-5 Level was a result of this operational measure of general applicability. The decision was not directed specifically at the Applicant and did not affect her rights and obligations. The Applicant remains rostered for the position of Claims Assistant at the FS-5 level, which was the position she applied for in 2010.

8. The MEU, having deemed the request not receivable because there was no administrative decision, did not go on to address whether the Applicant made her request within the stipulated timelines.

Consideration

9. Having reviewed the application, the Tribunal considers that the primary issue to be determined is its receivability. The issue of receivability is one which in appropriate cases, such as this one, the Tribunal may determine on a priority basis without awaiting the Respondent's reply.¹

10. Further, as underscored in UNDT/2021/101, *Cherneva* at paragraph 10,

[t]he Tribunal has the competence to review an application's receivability even if the parties do not raise the issue because "it constitutes a matter of law and the Statute prevents the [Tribunal] from receiving a case which is actually non-receivable" (see *Christensen* 2013-UNAT-335, para. 21).

11. The Tribunal deems it appropriate to determine this application by way of summary judgment on its own initiative pursuant to art. 9 of its Rules of Procedure.

¹ *Morales* UNDT/2019/158, *Cherneva* UNDT/2021/101.

12. Staff rule 11.2 (c) provides that:

A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested. The deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

13. It is established by Appeals Tribunal jurisprudence, including *Babiker* 2016-UNAT-672, that the Dispute Tribunal may only review decisions that have been the subject of a proper and timely request for management evaluation. UNAT affirmed that in so doing

34. ... the UNDT correctly recognized that determining “the date on which [the Applicant] received notification of the administrative decision to be contested” was its first task.

14. In the present application, the Applicant became aware of her de-rostering in 2017 and it became clear/apparent in 2020, after three years of enquires that she was in fact de-rostered. She received notification of the decision by way of an email from the Human Resource Services Division (“HRSD”) of the United Nations Department of Operational Support.

15. The email is included as annex A/2 to the application which is a compilation of emails that includes an email dated Sunday, 1 March 2020 from the HRSD which, after giving an explanation for the changed roster status, plainly informed the Applicant that she “no longer (has) FS-5 Administrative Assistance Roster status.”

16. The Applicant only requested management evaluation on 6 June 2021, several months beyond the 60-day deadline.

17. The Tribunal has no jurisdiction to determine this application on the merits as it challenges a decision that was not submitted for management evaluation in a timely manner.

18. In addition to the foregoing, the Tribunal finds merit in MEU's position that the matter complained of does not include an administrative decision for purposes of staff rule 11.2(a) which provides as follows:

A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

19. The well-established jurisprudence on the meaning of an administrative decision, for purposes of the Staff Rules governing receivability, is in the former United Nations Administrative Tribunal Judgment No. 1157, *Andronov* (2003), paragraph V, as follows:

It is acceptable by all administrative law systems, that an "administrative decision" is a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences.

20. There was no such administrative decision in the instant case.

21. The Tribunal's determination, in the circumstances, is that the application was filed without being preceded by a timely filing of a request for management evaluation and the subject matter complained of does not include an administrative decision.

22. The application is neither receivable *ratione materiae* nor *ratione temporis*.

Conclusion

23. The application is dismissed as not receivable.

Case No. UNDT/NBI/2021/080

Judgment No. UNDT/2021/114

(Signed)

Judge Eleanor Donaldson-Honeywell
Dated this 28th day of September 2021

Entered in the Register on this 28th day of September 2021

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi