



Before: Judge Sean Wallace
Registry: Nairobi
Registrar: René M. Vargas M., Officer-in-Charge

BUKHARI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:

Ron Mponda

Counsel for Respondent:

Jan Schrankel, UNHCR
Marietta Hristovski UNHCR

Introduction

1. On 23 February 2024, the Applicant, a staff member of the Office of the United Nations High Commissioner for Refugees (“UNHCR”), filed an application before the Dispute Tribunal contesting the decision to change his pay status and his placement on Special Leave Without Pay (“SLWOP”) initially from 26 October 2022, subsequently from 16 November 2022, and recently from 16 February 2024 (“the contested decision”). The Applicant states in his application that he was notified of this decision on 4 October 2022.

2. The Applicant also filed a motion for interim measures, requesting for the suspension of implementation of the contested decision during the pendency of his substantive application, pursuant to art. 10.2 of the Tribunal’s Statute.

3. The Respondent filed a response to the Applicant’s motion on 28 February 2024. In addition, the Respondent filed a motion for summary judgment on receivability pursuant to art. 9 of the Tribunal’s Rules of Procedure.

Consideration

4. Art. 9 of the Tribunal’s Rules of Procedure provides that a “party may move for summary judgement when there is no dispute as to the material facts of the case and a party is entitled to judgement as a matter of law. The Dispute Tribunal may determine, on its own initiative, that summary judgement is appropriate”.

5. Art. 8(1)(d)(i)(a) of the Tribunal’s Statute stipulates that an application shall be receivable if the application is filed “[w]ithin 90 calendar days of the applicant’s receipt of the response by management to his or her submission”. Art. 8(3) of the Tribunal’s Statute stipulates that the Dispute Tribunal “shall not suspend or waive the deadlines for management evaluation”.

6. In the present case, the Applicant filed a management evaluation request on 29 August 2022 challenging the following administrative decisions:

- a. Placement on SLWOP;

- b. Not being given full and fair consideration for the position of Representative (D-1) advertised under Job Opening (“JO”) 34972 (“Cairo Position”);
 - c. Not being given full and fair consideration for the position of Representative (D-1) advertised under JO 37274 (“Brasilia Position”); and
 - d. The unlawfulness of the decision to convert his status from Special Leave With Full Pay to SLWOP.
7. By letter dated 25 October 2022, the UNHCR Deputy High Commissioner communicated her management evaluation response to the Applicant, in which she determined that:
 - a. The Applicant was given full and fair consideration for the Cairo Position;
 - b. Although the manager’s views for the Brasilia Position referred to a flawed performance appraisal, that reference did not vitiate the selection process because he accepted the appraisal that became final in the absence of a rebuttal, but, in any event, the irregularity in the performance appraisal did not affect the ultimate outcome;
 - c. The then forthcoming decision to place the Applicant on SLWOP or Special Leave with Partial Pay was lawful; and
 - d. UNHCR had upheld its organizational duty to the Applicant as a staff member in between assignments seeking assignment and facing SLWOP.
8. Having received the above-mentioned management evaluation response on 25 October 2022, the Applicant had 90 days to file an application in accordance with art. 8(1)(d)(i)(a) of the UNDT Statute, that is, by 23 January 2023, but failed to do so. Therefore, insofar that this application was premised on the management evaluation response of 25 October 2022, it is not receivable *ratione temporis*.

9. At para. 4, sec. V of his application form, the Applicant states that the contested decision was taken on 4 October 2022. Art. 8(1)(c) of the UNDT Statute stipulates that an application shall be receivable if an applicant has previously submitted the contested administrative decision for management evaluation, where required. The Applicant did not request management evaluation of this decision and the application is therefore not receivable *ratione materiae*.

10. The 5 February 2024 notification to the Applicant, that his temporary assignment was shortened and that as of 16 February 2024 he was to be placed on SLWOP, is not a new decision but only a statement acknowledging the deferral of the original decision because of temporary assignments that the Applicant obtained. To the extent that he received the notification as a new decision, he has not sought management evaluation of it.

11. Given that the substantive application is irreceivable, the Applicant's request for interim measures during the proceedings, as governed by art. 10.2 of the Statute of the Dispute Tribunal and as also reflected in art. 14 of the Tribunal's Rules of Procedure, has no basis and is accordingly rejected.

Conclusion

12. In view of the foregoing, the Tribunal dismisses the application as irreceivable and rejects the Applicant's request for interim measures during the proceedings.

(Signed)

Judge Sean Wallace

Dated this 4th day of March 2024

Entered in the Register on this 4th day of March 2024

(Signed)

René M. Vargas M., Officer-in-Charge, Nairobi