UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2025/014
Judgment No.: UNDT/2025/035
Date: 23 June 2025
Original: English

Before: Judge Margaret Tibulya

Registry: New York

Registrar: Isaac Endeley

BABOCI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Lucienne Pierre, AS/ALD/OHR, UN Secretariat
Fabian M. Preger, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant is a staff member of the United Nations Office of Counter-Terrorism ("UNOCT") in New York. On 30 May 2025, she filed an application contesting the decision to evaluate her performance for the 2024-2025 cycle as "D—'Does not meet expectations'".

2. On 12 June 2025, the Respondent filed a motion to have the receivability of the application determined as a preliminary matter and requested the Tribunal to suspend the deadline for the filing of his reply.

3. The Applicant did not respond to the motion within the five-day time limit stated in art. 6 of Practice Direction No. 5 on the Filing of Motions and Responses.

Considerations

Receivability

4. On 8 May 2025, the Applicant received notification that her Second Reporting Officer ("SRO") had endorsed the final performance rating given by the First Reporting Officer ("FRO"). On 15 May 2025, the Applicant submitted her written rebuttal statement to the appropriate office and on 30 May 2025, she was informed that a rebuttal panel had been established. Also on 30 May 2025, the Applicant filed the present application while the rebuttal process was ongoing.

5. The Respondent submits that the application is not receivable *ratione materiae* because the Applicant "fails to identify a final administrative decision that is in non-compliance with her terms of appointment or contract of employment, as required under Article 2.1(a) of the Statute of the United Nations Dispute Tribunal".

6. The Respondent further submits that the rebuttal process initiated by the Applicant regarding her performance appraisal "is still ongoing and no final decision on the Applicant's performance rating has been made".

7. The Tribunal recalls that the procedure for rebutting a performance appraisal is set out in sec. 14.1 of ST/AI/2021/4/Rev.1, which provides:

> … Staff members who disagree with a "partially meets performance expectations" or a "does not meet performance expectations" rating received at the end of the performance cycle may, within 14 calendar days of signing the completed performance document, submit to the relevant local human resources office a written rebuttal statement setting forth briefly the specific reasons that a higher overall rating should have been received ...

8. Further, sec. 14.5 of ST/AI/2021/4/Rev.1 provides that "[t]he rating resulting from the rebuttal process is binding on the head of entity and on the staff member concerned". However, under sec. 14.7 of ST/AI/2021/4/Rev.1, "administrative decisions that stem from any final performance appraisal and that affect the conditions of service of a staff member may be resolved through informal or formal justice mechanisms".

9. Article 2(1) of the Dispute Tribunal's Statute provides that the Dispute Tribunal is competent to hear and pass judgment on an application appealing "an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment". Further, as the Appeals Tribunal has stated, before an administrative decision can be contested and held to be in non-compliance with the contract of employment of a staff member, it must be shown to adversely affect the rights or expectations of the staff member and have direct legal effect (see *Alvear* 2024-UNAT-1464, para. 39). Thus, in order for the Tribunal to entertain the merits of an application, the applicant must show that the contested decision has produced direct legal consequences having a direct impact on him or her (*Hassanin* 217-UNAT-759, para. 37).

10. It is well established in the jurisprudence of the Appeals Tribunal that the Dispute Tribunal has the authority to satisfy itself that an application is receivable under art. 8 of its Statute (see, for instance, *O'Neill* 2011-UNAT-182, para. 31, as affirmed in *AAX* 2024-UNAT-1504, para. 47). A determination on receivability must be made without regard to the merits of the case (see, for instance, the Appeals Tribunal in *Gehr* 2013-UNAT-313; *Christensen* 2013-UNAT-335; *Cooke* 2013-UNAT-380; *Lee* 2014-UNAT-481).

11. In the present case, it is clear that a final decision regarding the Applicant's performance rating for the 2024-2025 cycle had not yet been made by the time she

filed the present application as the matter was still pending before the rebuttal panel. Thus, in the absence of a final adverse decision of the rebuttal panel, the Tribunal finds that the application is premature and, therefore, not receivable. (See, for example, *Gehr*, at para. 20, affirming the Dispute Tribunal's Judgment in *Gehr* UNDT/2012/103).

Conclusion

12. The application is rejected as not receivable *ratione materiae*.

13. The Respondent's motion to suspend the deadline for filing his reply is granted.

(Signed)

Judge Margaret Tibulya
Dated this 23rd day of June 2025

Entered in the Register on this 23rd day of June 2025

(Signed)

Isaac Endeley, Registrar, New York