

UNDT/2018/102, Solomon

UNAT Held or UNDT Pronouncements

The decision to temporarily withhold the Applicant's final entitlements pending the completion of the investigation by OAI into allegations of fraud, collusion, conflict of interest and misuse of authority was not receivable since it did not constitute an appealable administrative decision within the meaning of article 2.1 (a) of the UNDT Statute. The application was not receivable, *ratione materiae*, since the contested "decision" did not have direct legal consequences for the Applicant. Additionally, the Applicant took the decision to resign, notwithstanding being advised that in doing so a suspension on the processing of her final entitlements would occur pending clearance of the issue of any financial indebtedness as a result of the allegations against her. The circumstances the Applicant complained of were therefore largely a consequence of her own action in resigning. The Administration's action in suspending the processing and payment of the Applicant's final entitlements during the course of the ongoing investigation was merely a temporary measure to enable an administrative decision to hold the Applicant liable for any financial loss incurred by the Organization as a result of a finding of misconduct. Additionally, it was non-receivable because the Applicant failed to submit a request for management review identifying an administrative decision which would thereby afford the Administration an opportunity to consider the matter. The decision of 29 March 2016 was unequivocal. It was, in fact, confirmation of what the Applicant had already been told in the email from the Resident Representative on 7 January 2016. Further, the 29 March 2016 decision explained the reasons for the temporary withholding of her final entitlements and the fact that it was contingent on completion of the OAI investigation. As such, the Applicant was fully informed of both the decision and the reasons for it and was, from that date, in a position to challenge the lawfulness of the decision. The Applicant was required to request a management evaluation of the contested decision but she did not do so. Having failed to take the mandatory first step of requesting a management evaluation, the Applicant did not have access to the Dispute Tribunal's jurisdiction.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the Respondent's decision to withhold her terminal dues.

Legal Principle(s)

Article 2.1 (a) of the Statute of the UN Dispute Tribunal establishes that: The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations: (a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged noncompliance [...]" . Staff rule 11.2(a) provides that: 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 management evaluation of the administrative decision. Once an "administrative decision" is properly identified, staff rule 11.2(c) further provides that the request: shall not be receivable by the Secretary-General unless it is sent within sixty (60) calendar days from the date on which the staff member received notification of the administrative decision to be contested.

Outcome

Dismissed as not receivable

Full judgment

[Full judgment](#)

Applicants/Appellants

Solomon

Entity

UNDP

Case Number(s)

UNDT/NBI/2016/93

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

15 Oct 2018

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

Applicable Law

Staff Rules

- Rule 11.2(a)

UNDT Statute

- Article 2
- Article 8