



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

CASTELLI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Nicole Wynn, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant is a Policy and Best Practices Officer, at the P-4 level, working with the United Nations Interim Force in Lebanon (“UNIFIL”). On 23 October 2023, he filed an application contesting the 31 May 2023 decision to change his reporting lines.

2. The Respondent filed a reply on 22 November 2023 requesting the Tribunal to, among others, dismiss the application on the ground that it is not receivable *ratione materiae*.

Procedural background

3. On 31 May 2023, via an inter-office memorandum, the Applicant was informed that effective 22 May 2023, his First Reporting Officer (“FRO”) would be Ms. Monica Maria Costa Bernardo, and his Second Reporting Officer (“SRO”) would be Mr. Roy Joblin.

4. On 12 June 2023, the Applicant requested management evaluation of the decision to change his reporting lines.

5. On 14 June 2023, he filed an application seeking, pending management evaluation, the suspension of the decision to change his reporting lines effective 22 May 2023.

6. By Order No. 108 (NBI/2023), issued on 21 June 2023, the Tribunal found the application for suspension of action receivable. The Tribunal, however, went ahead and dismissed the application on the ground that the contested decision was not *prima facie* unlawful.

7. On 19 July 2023, the Management Evaluation Unit (“MEU”) issued its decision, finding that the Applicant’s request was not receivable.

8. By Order No. 12 (NBI/2014), issued on 24 January 2024, the Applicant was directed to file a rejoinder to the Respondent's reply by 23 February 2024. On 21 February 2024, the Applicant filed a motion seeking an extension of time to file a rejoinder because he had received the MEU decision on 20 February 2024.

9. The Applicant, however, made an effort and filed his rejoinder on 23 February 2024 as directed. Therefore, the motion was overtaken by events and is thus moot.

Parties' submissions on the receivability of the application

Respondent's submissions

10. The Respondent contends that the application is not receivable *ratione materiae* because the decision to change a staff member's reporting lines is not a reviewable administrative decision under art. 2(1)(a) of the Dispute Tribunal Statute. Relying on *Shah* 2023-UNAT-1351 (paras. 39-41), he submits that an inter-office memorandum informing the staff member of a change in reporting lines is not a reviewable administrative decision.

11. UNIFIL explained to the Applicant that the change in reporting lines was operational, stating in response to his inquiry that "the reporting lines to be followed are per the authorized budget ..., as such 'your post reports to the P-5 Senior Coordination Officer as FRO, and the Principal Coordination Officer as SRO'".

12. The Respondent emphasizes that this change did not produce direct adverse legal consequences to the Applicant's employment contract. Nor has the Applicant suffered any harm. He continues to perform his functions at the P-4 level. The only change is that he reports to a different person, a change that he acknowledges has been quite common as UNIFIL has adapted to operational changes to meet the mandate of the Mission.

Applicant's submissions

13. The Applicant contends that his application is receivable. Referring to *Obino* UNDT/2013/008, the Applicant submits in his rejoinder that:

[T]he Tribunal detailed the jurisprudence of UNDT of the so called '*test of Andronov*' in which an applicant shall demonstrate the following[:] (a) the contested decision was taken by the Administration, (b) that the decision was taken unilaterally and was of individual application, and (c) it directly impacted on the appointment or contract of employment.

The Administration took the decision to change the reporting line and communicated the decision to me via a memorandum. The decision was taken unilaterally since I was never consulted, nor I agreed on the measure (see for more details below); it affected me as an individual since I had my reporting lines changed and it did impact my contract of employment.

14. The Applicant seeks to distinguish his case from *Shah*, arguing that, in his case, "the decision was not operational since the supervisor attempted on at least three occasions, in 2020, 2021 and 2022, to change [his] reporting lines to three different supervisors".

15. In closing, the Applicant, requests the Tribunal to reaffirm the receivability of his application, as determined by it in Order No. 108 (NBI/2023).

Consideration

Receivability

16. The question before the Tribunal is whether or not the UNDT has jurisdiction to adjudicate the application.

17. Art. 2(1)(a) of the UNDT Statute provides that the Dispute Tribunal shall be competent to hear and pass judgment on an application filed by an individual:

[t]o 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 non-compliance.

18. The United Nations Appeals Tribunal (“UNAT”) has clarified that an inter-office memorandum informing the staff member of a change in reporting lines is not a reviewable administrative decision. In *Shah* (2023-UNAT-1351), UNAT held that:

The UNDT correctly found that the Inter-Office Memorandum announcing changes to reporting lines for all UNMOGIP staff in Srinagar does not contain an appealable administrative decision. It did not deprive Mr. Shah of his work, or affect his functions. It was limited to announcing a general change of reporting lines with regard to FROs and SROs. Therefore, in the absence of any direct impact or negative consequences for Mr. Shah or his terms of appointment, it was not appealable by him.

19. In view of the foregoing jurisprudence, the Tribunal agrees with the Respondent that the contested decision did not produce direct adverse legal consequences to the Applicant’s employment contract. In this connection, it is relevant to note that the prior issuance of this Tribunal on which the Applicant relies, namely Order No. 108 (NBI/2023), was issued prior to *Shah* and, thus, is no longer applicable.

20. The Applicant continues to perform his functions at the P-4 level. The only change is that he reports to a different person. The Applicant states that the decision affected his contract, but he does not explain how. He argues that he had been previously promised that he would be consulted prior to any change in reporting lines, but the record reflects that he was consulted. Moreover, there is no legal right to consultation prior to a change in reporting lines and, even if there were, consultation does not include an obligation to obtain his consent to any proposed changes.

21. He also argues that there were previous proposed changes to his reporting lines implying that these indicate retaliation. However, it is not refuted that the change in reporting lines resulted from the budget authorization of a new P-5 Senior Coordination Officer to serve as deputy to the D-1 Principal Coordination Officer, whereby the Applicant now reported to the P-5 Senior Coordination Officer instead of the D-1 Principal Coordination Officer. And it is noted that the challenged decision did not just affect the Applicant; it changed the reporting lines for all five staff members in the affected units.

22. . Accordingly, the present case cannot stand. It has to be dismissed as not receivable.

Conclusion

23. In view of the foregoing, the Tribunal DECIDES to dismiss the application as not receivable.

(Signed)

Judge Sean Wallace

Dated this 29th day of February 2024

Entered in the Register on this 29th day of February 2024

(Signed)

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