



Before: Judge Rowan Downing

Registry: Geneva

Registrar: René M. Vargas M.

ADNAN-TOLON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alistar Cumming, AAS/ALD/OHR, UN Secretariat

Introduction

1. On 8 October 2018, the Applicant, a staff member with the United Nations Peacekeeping Force in Cyprus (“UNIFCYP”), filed an application seeking official acknowledgment of the additional hours of work he has performed since 17 March 2014 and monetary compensation in respect thereof.

2. This claim is based upon the Applicant’s assertions that he was required by his supervisors to work overtime without compensation from February 2014 and that he worked such overtime due to his commitment to the Organization and out of fear of retaliation.

3. The Applicant also alleges that he was subjected to harassment and abuse of authority by the current and former Chief of Mission Support of UNIFCYP, in violation of ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority), as well as a breach of contract. He further challenges the failure to complete his performance evaluation within the applicable deadline, in violation of ST/AI/2010/5 (Performance Management and Development System). The Applicant, however, does not request any remedy in respect of these alleged violations of the rules and of his contract of employment.

4. The Applicant lodged a request for management evaluation on 7 June 2018, receiving a reply by letter dated 24 July 2018 rejecting the request.

5. The Respondent filed his reply on 12 November 2018 asserting that the application is not receivable on several grounds:

a. *Ratione materiae*, as no contestable administrative decision is identified. The Applicant has not provided any evidence that the Administration has refused to grant him compensatory time off or overtime payments, or that he was requested to work beyond his normal hours;

b. *Ratione temporis*, as any decision not to grant the Applicant compensatory time off or overtime payments was not the subject of any

request for management evaluation within 60 days of any such alleged decision notified to the Applicant;

c. *Ratione materiae* insofar as it relates to the Applicant's performance evaluation under ST/AI/2010/5, as the Applicant did not request management evaluation of this alleged decision. In any event, pursuant to ST/AI/2010/5, the Applicant may only challenge administrative decisions that stem from a final performance appraisal. The Applicant has not identified any decision of this nature; and

d. *Ratione materiae* insofar as it relates to alleged violations of ST/SGB/2008/5, as there has been no compliance with the provisions in sec. 5.11 by the submission of a complaint in respect of prohibited conduct. Further there is no right to bring a free-standing complaint of prohibited conduct to the Tribunal based upon ST/SGB/2008/5 as the Tribunal has no jurisdiction to carry out its own investigation into the allegations.

Consideration

6. The Tribunal's Rules of Procedure provide in their art. 9 that when there is no dispute as to the material facts and a party is entitled to judgment as a matter of law, "[t]he Tribunal may determine, on its own initiative, that summary judgment is appropriate". The Tribunal finds that the application raises a preliminary issue of receivability which may be determined by way of summary judgment.

7. The Tribunal does not have jurisdiction to hear and determine all matters in respect of which a staff member may feel aggrieved. The Tribunal must ensure that there is an administrative decision that is alleged to be in non-compliance with the staff member's terms of appointment or his or her contract of employment, as provided for in art. 2.1(a) of the Tribunal's Statute. Such decision must be unilaterally taken by the Administration, be directed to the staff member and have direct legal consequences for the staff member (see *Lloret Alcaniz et al.* 2018 UNAT-840, para. 61).

8. The Applicant has failed to identify any specific decision taken by the Administration in respect of his alleged overtime work. He did not refer either to any request that he would have made to be compensated for this work nor to any evidence that he had in fact been requested to work beyond his normal working hours. Without such identifiable decision the application is not receivable *ratione materiae*.

9. The Tribunal also notes that the Applicant appears to have misunderstood the nature of the issue of harassment and abuse of authority and the import of ST/SGB/2008/5. As asserted by the Respondent, allegations of harassment and abuse of authority are not separate grounds which may permit the Tribunal to consider a matter. A complaint of harassment and abuse of authority involves a separate process, as is provided for in ST/SGB/2008/5, with the formal procedures being set out in sec. 5.11. The Tribunal does not have jurisdiction to conduct an investigation into allegations of prohibited conduct under ST/SGB/2008/5. The assertions of the Respondent are correct in this respect. Thus insofar as the application refers to breaches of the provisions of ST/SGB/2008/5 as a separate cause of action, it is not receivable.

10. In respect of alleged delays in the completion of the Applicant's performance evaluation constituting a breach of ST/AI/2010/5, there is no right to bring this complaint before the Tribunal. The only effective right is to be found in sec. 15.7 of the Administrative Instruction, which relevantly provides that "administrative decisions that stem from any final performance appraisal and that affect the conditions of service of a staff member may be resolved by way of informal or formal justice mechanisms". There has been no reviewable decision stemming from the Applicant's performance appraisal identified in the application. Furthermore, the Applicant did not raise any issue related to his performance appraisal in his management evaluation of 7 June 2018. The requirement set forth in art. 8(1)(c) of the Tribunal's Statute to submit a decision to management evaluation prior to seizing the Tribunal is therefore not met. This part of the claim is also not receivable *ratione materiae*.

11. The Tribunal has, on any view, no jurisdiction to consider this application.

Conclusion

12. In view of the foregoing, the application is dismissed.

(Signed)

Judge Rowan Downing

Dated this 12th day of April 2019

Entered in the Register on this 12th day of April 2019

(Signed)

René M. Vargas M., Registrar, Geneva