



Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

KOSTOMAROVA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

N/A

Introduction

1. By application filed on 5 March 2014 and registered under Case No. UNDT/GVA/2014/006, the Applicant contests the decision to take no further action, after investigation, on her complaint against her supervisor for prohibited conduct under Secretary-General's bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment including sexual harassment, and abuse of authority).

Facts

2. The Applicant joined the Organization in 1989. She currently serves as Text Processing Clerk, Russian Text Processing Unit ("RTPU"), Languages Service ("LS"), Division of Conference Management ("DCM"), United Nations Office at Geneva ("UNOG").

3. On 6 June 2012, the Applicant submitted to the then Director-General, UNOG, a complaint alleging that the Chief, RTPU, had engaged in harassment and abuse of power, had falsified the official productivity records of the RTPU and manipulated the database to enter false information.

4. Following this complaint, the Chief, RTPU, submitted a complaint to the Director-General against the Applicant alleging that she had formulated unsubstantiated accusations.

5. On 16 November 2012, a fact-finding panel ("the Panel") was appointed to investigate both complaints. The Panel handed its report on 11 October 2013.

6. By memorandum dated 12 February 2014, the Acting Director-General, UNOG, informed the Applicant that, after review of the Panel's report, he had decided to close the case with respect to her complaint, with no action to be taken on the grounds that the Panel "did not find evidence to support the allegations of harassment and abuse of authority".

7. The Applicant filed the present application on 5 March 2014.

Consideration

8. The Tribunal observes that the application does not include, nor does it at least mention, a request for management evaluation.

9. The requirement of management evaluation is set out in staff rule 11.2:

(a) 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 a management evaluation of the administrative decision.* (emphasis added)

(b) A staff member wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General, or of a decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following the completion of a disciplinary process is not required to request a management evaluation.

(c) A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

10. Likewise, art. 8.1 of the Tribunal's Statute provides:

An application shall be receivable if:

...

(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required

...;

11. In addition to the unambiguous terms of these provisions, the requirement of filing a request for management evaluation prior to filing an application with the Tribunal has been invariably upheld by the Appeals Tribunal (e.g., *Rosana* 2012-UNAT-273; *Dzuverovic* 2013-UNAT-338).

12. It is sufficiently clear from the application and its supporting documents that what the Applicant intends to challenge is the closure of her case concerning allegations of harassment and abuse of power without further action, as communicated to her by memorandum dated 12 February 2014. This decision obviously does not fall under any of the two categories of decisions for which a management evaluation is not required under staff rule 11.2 (b), to wit, decisions taken pursuant to advice from technical bodies and the imposition of measures pursuant to staff rule 10.2 following a disciplinary process.

13. Therefore, in the absence of a management evaluation request, the Tribunal cannot but reject the present application as irreceivable.

14. The issue discussed above is a matter of law, which may be adjudicated even without serving the application to the Respondent for reply and even if it was not raised by the parties (see *Gehr* 2013-UNAT-313; *Christensen* 2013-UNAT-335; see also *Bofill* UNDT/2013/141; *Lee* UNDT/2013/147). As such, the Tribunal deems it appropriate to decide on the application by summary judgment, in accordance with art. 9 of its Rules of Procedure, which reads:

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.

15. The Tribunal wishes to emphasize that the rejection of the present application is based exclusively on the want of management evaluation. In no manner does it preclude the Applicant from filing a new application with the Tribunal against the same decision, if necessary, after having gone through the management evaluation process. In this regard, the Tribunal notes that the statutory 60-day time limit to request management evaluation has not yet elapsed, since the contested decision was taken only on 12 February 2014.

Conclusion

16. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

(Signed)

Judge Thomas Laker

Dated this 11th day of March 2014

Entered in the Register on this 11th day of March 2014

(Signed)

René M. Vargas M., Registrar, Geneva