



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2014/12

Judgment No: UNDT/2014/46

Date: 24 April 2014

Original: English

Before: Judge Coral Shaw

Registry: Nairobi

Registrar: Abena Kwakye-Berko

STAEDTLER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Saidou N'dow, UN-HABITAT

Introduction

1. The Applicant contests the decision of the Management Evaluation Unit (MEU) to “misrepresent the Applicant’s request for management evaluation dated 3 December 2013”. That request related to administrative decisions by the Office of Staff Legal Assistance (OSLA).

Facts

2. The Applicant was recruited by UN-Habitat on 13 September 2011 as a Technical Officer at the P-4 level at the UN-Habitat Regional and Technical Cooperation Division (RTCD) in Tripoli, Libya, for a fixed term appointment of one year. His contract was extended until 31 December 2012 at which time he was separated from service.

3. The Applicant sought legal assistance from OSLA in relation to 4 issues that had arisen in the course of his employment. He first contacted OSLA by email on 14 October 2012.

4. On 6 December 2012, following a phone discussion between the Applicant and an OSLA lawyer he was given written legal advice about the prospects of success on his claims. He was further told that “representation by OSLA is not a pre-requisite for either a request for management evaluation or an application to the UNDT”.

5. The Applicant subsequently sought management evaluation and later filed applications with the Tribunal.

6. On 1 October 2013 the Tribunal, which was now seized of one of the Applicant’s cases¹, issued a case management order in which it addressed legal representation as follows:

The Applicant is also advised to seek legal counsel for the conduct of this case. Information on legal assistance is available at

¹ Case No. UNDT/NBI/2013/21.

http://www.un.org/en/oaj/leag_assist/howto.shtml. The Tribunal also directs service on the present order on the Office of Staff Legal Assistance to facilitate the process.

7. On 31 October 2013 and 5, 6 12 and 13 November 2013, OSLA and the Applicant engaged in further communications.

8. On 3 December 2013 the Applicant requested management evaluation of the following decisions by OSLA:

a) To decline legal representation in the ongoing case UNDT/NBI/2013/021 (the first decision)

b) To decline legal representation in the ongoing case UNDT/NBI/2013/061 (the second decision).

9. In answer to the question on the MEU application form “When was the decision taken or when you became aware of it?” the Applicant replied 5 November 2013.

10. On 20 December 2013, MEU informed the Applicant that his request for management evaluation in respect of the first decision (which it dated as 6 December 2012) was not receivable because it was time barred. It considered that the first decision had taken place on 6 December 2012.

11. MEU also found that his request for management evaluation of the second decision was not receivable since MEU lacked competence over the matter the Applicant submitted for management evaluation.

12. The Applicant took issue with MEU’s decision to use the 6 December 2012 date when he had stated that the relevant date was 5 November 2013. He embarked on a lengthy correspondence with MEU about this.

13. On 30 December 2013 the Applicant filed an application with the Tribunal² contesting the decisions of OSLA to decline legal representation in the ongoing cases UNDT/NBI/2013/021 and UNDT/NBI/2013/061.

² Case No. UNDT/NBI/2013/098.

14. On 14 January 2014 the Applicant requested management evaluation of “the Respondent’s decision to irregularly misrepresent my request for management evaluation dated 3 December...”

15. On 30 January the MEU responded (inter alia) that the request was not receivable.

Issues

16. The single issue in this case is whether a decision of MEU is subject to review by the Tribunal.

Applicant’s submissions

17. The Applicant submitted, quoting many authorities, that the impugned decisions were substantively irregular as they violated his right to due process including the Organization’s obligation of fair dealing, to act in good faith and to respect the applicant’s dignity.

18. The decisions incorporated personal prejudice and bias and were an abuse of authority which damaged his career and caused severe emotional damage.

Respondent’s submissions

19. The Respondent submitted that the Applicant’s allegations against OSLA and MEU are unfounded and not supported by the correspondence he had with the relevant entities.

20. The Applicant’s request for legal advice was given full and careful consideration by OSLA and MEU was correct in affirming the decision. MEU’s decision that the request for review of the first decision was time barred was justified and in accordance with the relevant rules and procedures.

21. In reaching its decision in relation to the second decision MEU did not act inconsistently with its mandate or incorrectly exercise its discretion.

22. OSLA has discretion to decide whether it undertakes to represent a client but does not have an obligation to do so.

Considerations

23. Neither the Applicant nor the Respondent addressed the fundamental issue of whether an applicant may request the Tribunal to review a decision made by MEU. The omission is particularly surprising given that the Tribunal has already pronounced on this issue at least twice.³

24. The Tribunal also notes that in their submissions both parties addressed the substance of the contested decisions by OSLA. Such submissions are inappropriate and irrelevant to the present case as this application is confined to challenging the decisions made by MEU.

25. MEU was established by General Assembly resolution 63/228. In article 50 the GA emphasised the need to have in place a process of management evaluation that is efficient, effective and impartial. In article 51 the General Assembly reaffirmed the importance of the general principle of exhausting administrative remedies before formal proceedings are instituted.

26. Staff rule 11.2 provides that

(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.

27. These resolutions and rules set up a system of management evaluation as a prerequisite step which must be exhausted in a timely manner before an application (apart from disciplinary cases) may be brought to the Tribunal.

³ Hassanin v SG UNDT/2014/006 para 37 and Ameer Order No. 145 (NBI/2010), paragraphs 7 and 8)

28. Although MEU sits outside the formal United Nations internal justice system it does intersect with it. This is demonstrated in article 2.2 of the Statute which gives competence to the Tribunal to suspend an administrative decision during the pendency of a management evaluation.

29. When an application is filed in the Tribunal, the contested decision which may be reviewed is not the decision of t MEU but the administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment⁴. The outcome of a review of the administrative decision by MEU is not of itself an administrative decision as defined in article 2 and the Tribunal is not competent to hear and pass judgment on it.

30. The remedy for an applicant who is dissatisfied with the outcome of an MEU review of an administrative decision is to file an application with the Tribunal. The Tribunal hears the appeal against the administrative decision *de novo* and without regard to the outcome of the MEU review. This gives an applicant a second opportunity to present his or her case afresh to the Tribunal.

31. In the present case the Applicant's Application to the Tribunal contesting the administrative decisions of OSLA is yet to be determined.

Conclusion

32. The Applicant's challenge against the outcome of the MEU review is not receivable by the Tribunal.

33. The Application is dismissed.

Signed

Judge Coral Shaw

Dated this 24 day of April 2014

⁴ Art 2(1) (a) Statute of the Dispute Tribunal.

Entered in the Register on this 24 day of April 2014

Signed

Abena Kwakye-Berko, Registrar, Nairobi