



Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

WONDIMU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:

Nicole Washienko, OSLA

Counsel for the Respondent:

Elizabeth Brown, UNHCR

Introduction

1. At the time of the contested decision, the Applicant was a staff member of the United Nations High Commissioner for Refugees (UNHCR) in Juba, South Sudan. In his Application filed on 5 May 2014, he contests the decision to remove him from the post of Deputy Representative, UNHCR, South Sudan and the attendant decision to re-advertise his post.

2. The Respondent filed a Reply on 5 June 2014 in which it is asserted that the Application is not receivable.

Procedure

3. On 6 June 2014, the Applicant was directed to file his submissions in response to the issue of receivability by 13 June 2014.

4. The Applicant filed the said submissions on 13 June 2014.

Facts

5. The Applicant is a long-time staff member of UNHCR, having been employed by the Office since 1984.

6. By a memorandum dated 13 January 2014 and sent under cover of an email dated 16 January 2014, Ms. Karen Farkas, Director, DHRM, informed the Applicant that in light of the acute emergency situation in South Sudan, the High Commissioner had decided to reassign him from his function as Deputy Representative, South Sudan, to another function within UNHCR and to assign another staff member to the position on a temporary basis, effective immediately.

7. On 23 January 2014, the Applicant received a letter from UNHCR's Personnel Administration Payroll Section (PAPS), which provided him with information related to his departure from the duty station and interim administrative details relating to a future assignment. On 28 January 2014, PAPS informed the Applicant that his replacement would arrive in South Sudan on 31 January 2014.

8. On 28 January 2014, the Applicant filed a management evaluation request related to the PAPS letter of 23 January 2014 in which the Applicant stated that he contested its instruction to leave the duty station until further reassignment.

9. On 29 January 2014, the Applicant received another letter from UNHCR's PAPS informing him of the administrative formalities pending his reassignment to another function and in relation to his departure from South Sudan.

10. On 30 January 2014, the Applicant filed a second request for management evaluation attaching the 13 January 2014 memo.

11. On 31 January 2014, the Applicant filed an Application for Suspension of Action (SOA) with the United Nations Dispute Tribunal (UNDT) seeking to suspend an instruction informing him of the High Commissioner's decision to remove him from the post of Deputy Representative in South Sudan pending his reassignment to another post.

12. On 6 February 2014, the Dispute Tribunal refused the SOA application vide Order No. 027 (NBI/2014) on the ground that the Applicant's request for management evaluation was completed and communicated to him on 4 February 2014.

Respondent's submissions

13. The Respondent submits that the decisions contested by the Application as identified in section V thereof were not the subject of a previous management evaluation as required by art. 8.1(c) of the Statute of the Dispute Tribunal.

14. In section V of the Application, the Applicant identifies the contested decision as the decision to remove him from the post of Deputy Representative, South Sudan and the attendant decision to re-advertise his post.

15. In the Applicant's submission to the Deputy High Commissioner dated 28 January 2014, he did not contest the above cited decisions. Instead, the request for management evaluation of 29 January 2014 contested an instruction to leave his

duty station until further reassignment. The same applies to the Applicant's subsequent submission to the Deputy High Commissioner of 30 January 2014.

Applicant's submissions

16. Contrary to the assertions of UNHCR in its response to the Applicant's request for management evaluation and in its Reply to the Application for Suspension of Action, in the Applicant's request for management evaluation, dated 30 January 2014, he specifically requested review of a decision that had direct legal consequences on him.

17. While in his request the Applicant referred to the PAPS letter of 29 January 2014, he also stated that this letter informed him of the Director of DHRM, Karen Farkas', decision to readvertise the post he was encumbering, and further instructing him to leave the duty station until further reassignment. The Applicant's characterization of the PAPS letter of 29 January 2014 was accurate, as this letter specifically referred to Ms. Farkas' letter of 13 January 2014. Furthermore, the Applicant attached Ms. Farkas' letter to his request for management evaluation. With regard to the remedies that the Applicant was seeking through the management evaluation process, the Applicant asked that he be permitted to continue encumbering his post. Thus, the Applicant was clearly requesting that UNHCR management review its decision to re-advertise his post.

18. The PAPS letter of 29 January 2014 is inextricably linked with the decision to readvertise his post, as this letter dealt with administrative formalities relating to the Applicant's imminent departure from his post. These administrative formalities are a direct result of and are related to the decision to advertise the Applicant's post. By contesting the instructions in this letter, the Applicant is thereby contesting the decision to remove him from his post.

19. UNHCR's response to the Applicant's request for management evaluation indicates that it clearly understood the decision that the Applicant was contesting.

20. When the Applicant submitted his request for management evaluation to UNHCR, he was not represented by Counsel and he could not be expected to

articulate his request with as much precision as professional legal counsel would be expected to do. Nonetheless, even if the Applicant was not as precise as he could have been, the decision that he was contesting was clear – it was the decision to re-advertise his post and administrative formalities related to his departure that arose from this decision.

21. In his Reply, the Respondent asserted that even if the Tribunal found the Applicant's requests for management evaluation receivable, the Application would not be receivable since the decision contested by the Application was not the subject of a previous management evaluation. This argument is without merit. The decision that the Applicant was contesting in his management evaluation requests was the decision to remove him from his post and the attendant decision to re-advertise his post.

Considerations

Receivability

22. Article 8.1(c) of the Dispute Tribunal's Statute provides that an application shall be receivable if an applicant has previously submitted the requested administrative decision for management evaluation where required.

23. The Respondent challenges the receivability of this Application on the grounds that the decisions contested by the Applicant were not the subject of a previous management evaluation as required by art. 8.1(c).

24. The Respondent submitted that in section V of the Application, the Applicant identifies the contested decision as the decision to remove him from the post of Deputy Representative, South Sudan and the attendant decision to re-advertise his post. In the Applicant's submission to the Deputy High Commissioner dated 28 January 2014, the Applicant did not contest the above cited decisions, but that instead, the request for management evaluation of 29 January 2014 contested an instruction to leave his duty station until further reassignment. The Respondent further submits that the same applies to the Applicant's subsequent submission to the Deputy High Commissioner of 30 January 2014.

25. In his request for management evaluation dated 30 January 2014, the Applicant had written as follows:

I am requesting a Management Evaluation of an instruction which was communicated to me as Confidential Memo RET: PAPS/2014/00366 [...] informing me of the Director of DHRM, Karen Farkas', decision readvertise (sic) the post I am encumbering and further instructing me to leave my duty station until further re-assignment....

Therefore, the remedy I request is the immediate withdrawal of the instruction contained in Confidential Memo RET: PAPS/2014/00366 [...] and that I accordingly continue encumbering my post to which I am appointed by the High Commissioner consistent with UN Staff Rules.

26. Having carefully reviewed the contents of the request for management evaluation letter dated 30 January 2014 and the present Application, the Tribunal is satisfied that the Applicant has satisfied the requirements of art. 8.1(c) of the Dispute Tribunal's Statute. Whilst his request may not have been drafted in the most articulate legal language, the substance conveyed leaves no doubt, the Applicant did not want to be removed from his post and was not happy that it had been readvertised. The Respondent's objections on the grounds of receivability have no merit.

JUDGMENT

27. In view of the foregoing, the Tribunal decides that this Application is receivable.

(Signed)

Judge Nkemdilim Izuako

Dated this 11th day of February 2015

Entered in the Register on this 11th day of February 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi