



Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

NIELSEN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Federica Midiri, UNFPA

Introduction

1. On 19 April 2015, the Applicant, a former Procurement Assistant (G-5) in the United Nations Population Fund (“UNFPA”), Procurement Services Branch (“PSB”), Africa team, based in Copenhagen, filed an application challenging UNFPA inaction on her complaints of “improper behaviour ..., harassment and abuse of authority toward [her]” from the Office of the Department of Human Resources (“DHR”), UNFPA, and from the UNFPA Executive Director and Legal Offices, respectively.

Facts

2. On 28 January 2013, the Applicant entered the service of UNFPA in the Africa team, PSB, on a one-year temporary appointment (“TA”). Effective 23 September 2013, she was placed on Special Leave with Full Pay, and was separated from UNFPA upon the expiration of her TA on 26 January 2014.

3. The following facts are taken from the Applicant’s voluminous submission to the Tribunal.

4. By email of 2 October 2014, the Applicant addressed to an Investigations Analyst, Office of Audit and Investigation Services (“OAIS”), UNFPA, a 4-page complaint against the Chief, DHR, UNFPA, for incorrect behaviour and possible abuse of authority; she further asked OAIS to let her know whether an investigation would be launched into her complaint. The Investigations Analyst acknowledge receipt of the complaint on the same day, and informed the Applicant that OAIS would “assess and revert back to [her]”.

5. On 8 October 2014, the Applicant sent another email to OAIS, to file a “complaint on conflict of interests”, regarding the manner in which UNFPA, through its Executive Director, was dealing with requests for management evaluation she had previously filed.

6. By email of 10 December 2014, the Applicant submitted additional documents to OAIS, together with a “complaint on UNFPA Legal Council”, alleging a possible misconduct and conflict of interest in the review made of her requests for management evaluation.

7. On 23 December 2014, the Applicant submitted to OAIS a 7-page “complaint on harassment and abuse of authority from UNFPA Executive Director”. She received an acknowledgment receipt the following day from OAIS, by which she was informed that OAIS would “conduct a preliminary review of the information ... provided ... and revert back to [her]”.

8. By email of 7 February 2015, the Applicant submitted a request for management evaluation (“the first request”) that she described, in the title of her email, as concerning, *inter alia*, “the DHR managers”. In the request for management evaluation form, under the section “Administrative decision to be evaluated”, the Applicant indicated the following:

The decision of UNFPA Investigation Office not to trigger the investigation in regards to harassment and abuse of authority from UNFPA DHR and DHR Chief ... and DHR Deputy Chief ... toward me about which I was notified on February 1, 2015 by the Investigation Office.

9. On 8 and 11 March 2015, the Applicant submitted additional documents in the context of her request for management evaluation, which she described as proof of the improper actions of DHR towards her, “showing the harassment and abused of authority ... from the DHR Chief”.

10. By email of 13 February 2015, the Applicant addressed to OAIS a “complaint on harassment and abuse of authority from UNFPA Executive Director”, “in addition to [her] earlier complaints on [him]”. She ended her message in the following terms:

I kindly request the Investigation Office to review my complaints soonest and to notify me if the investigation will be triggered and if you admit the fact of harassment and abuse of authority toward me from the UNFPA Executive Director, DHR and Legal Office by the end of February 2015. If I will not receive the reply from you by COB February 28, 2015 I will assume that the Investigation Office doesn't want to trigger the investigation as there was sufficient time for reviewing my complaints and doing necessary actions.

11. On 1 March 2015, the Applicant submitted another request for management evaluation ("the second request"), this time regarding "the harassment, discrimination and abuse of authority toward [her] from UNFPA Executive Director Office as well as the Legal Office". In the request for management evaluation form, under the section "Administrative decision to be evaluated", the Applicant indicated the following:

The decision of UNFPA Investigation Office not to trigger the investigation in regards to harassment, discrimination and abuse of authority from UNFPA Office of Executive Director as well as the Legal Office toward me.

12. On 14 March 2015, the Applicant submitted "additional proofs/requests" in the context of her second request for management evaluation, as evidence of the improper behaviour towards her from UNFPA Executive Director Office as well as from the Legal Office.

13. Since she did not receive any reply to her two requests for management evaluation, the Applicant filed an incomplete application with the Tribunal on 19 April 2015, which she completed on 21 April 2015. Annex 45 to the application was filed *ex parte*, and Annexes 50 to 55 were filed under seal.

Parties' submissions

14. The Applicant's principal contentions are:

- a. The silence of OAI, which she considers as a refusal to launch the requested investigations, is unfounded, as her complaints were duly documented and the improper behaviour of UNFA Executive Director, his Legal Counsel, as well as of his Chief, DHR, is evident;

- b. Her case is not being treated seriously by UNFPA, and there is a mishandling of her requests for management evaluations due to a patent conflict of interest in place in UNFPA Legal Office; and
- c. She asks mainly to be compensated for the damage caused, and for a recognition that she was subject to harassment and abuse of authority by UNFPA.

Consideration

15. At the outset, it is necessary for the Tribunal to determine which decisions are being challenged by the Applicant and have been duly submitted to it. Indeed, it is not obvious to determine in the Applicant's voluminous submission, i.e. a 29-page Application with 66 annexes, totalling 452 pages, what exactly she wishes to contest. In her application form, under the section "Details of the contested decision", the Applicant described the contested decisions as follows:

UNFPA Executive Director Office ... hasn't answered me on my 2 latest [requests for management evaluation ("RMEs")] (RME Nr. 26 of February 7, 2015 and RME Nr. 27 of March 1, 2015) which were devoted to improper behavior toward me, harassment and abuse of authority toward me from DHR Office (RME Nr. 26) and to harassment and abuse of authority toward me from UNFPA Executive Director and Legal Offices. The RME Nr. 27 (regarding the improper behavior toward me, harassment and abuse of authority toward me from UNFPA Executive Director and Legal Offices). I was requesting UNFPA Executive Director Office to request any third party to do the ME Nr. 27 as UNFPA Executive Director and Legal Offices are not supposed to do evaluation of their own actions). However this apparently never was done by UNFPA.

Despite my reminders [...] to UNFPA Executive Director Office to provide me the replies on my RMEs Nr. 26-27 I haven't received any reply or any comment from UNFPA. I find that such behaviour of UNFPA shows that UNFPA doesn't admit the fact of harassment and abuse of authority toward me from the mentioned above UNFPA Offices and that UNFPA Executive Director Office thus agrees with the behaviour of the UNFPA Investigation Office, which clearly denies any misconducts despite the fact that I provided to both UNFPA Investigation Office and UNFPA Executive Director Office clear proofs that the lies and dishonest behaviour of the involved staff members took place. Please see

details and dates in regards to my communication with UNFPA Investigation Office in Annexes of the current submission. As UNDT can see from my RMEs Nr. 26 and 27 I applied for Management Evaluation after waiting for the reply from UNFPA Investigation Office for few months and after not receiving any reply from UNFPA Investigation Office I took the silence of UNFPA Investigation Office as their decision that the involved offices ostensibly didn't do any misconduct as the fair amount of time was given to the from UNFPA Investigation Office in order to evaluate my complaint. All my previous cases show that UNFPA Investigation Office despite the presence of clear facts of lies and slanders on me from the involved in my cases UNFPA PSB staff members, nonetheless denied that the involved staff members did misconduct and I find that from UNFPA Investigation Office is not doing their tasks in objective way. In the below submission I will provide further details.

16. The Tribunal wishes to recall what the Appeals Tribunal held in *Massabni* 2012-UNAT-238, namely that:

2. The duties of a Judge prior to taking a decision include the adequate interpretation and comprehension of the applications submitted by the parties, whatever their names, words, structure or content they assign to them, as the judgment must necessarily refer to the scope of the parties' contentions. Otherwise, the decision-maker would not be able to follow the correct process to accomplish his or her task, making up his or her mind and elaborating on a judgment motivated in reasons of fact and law related to the parties' submissions.

3. Thus, the authority to render a judgment gives the Judge an inherent power to individualize and define the administrative decision impugned by a party and identify what is in fact being contested and so, subject to judicial review which could lead to grant or not to grant the requested judgment.

17. Based on the Applicant's own submission, the Tribunal finds that the only decision that is properly before it is OAI's inaction with respect to the Applicant's complaints of "improper behaviour, harassment and abuse of authority" against UNFPA Chief, DHR, UNFPA Legal Office and UNFPA Executive Director. Since "not taking a decision is also a decision" (*Tabari* 2010-UNAT-030), this behaviour is tantamount to implied administrative decisions rejecting her complaints that, indeed, can be reviewed by the Tribunal.

18. In this respect, and based on the voluminous evidence on file submitted by the Applicant, the Tribunal notes that following her separation from UNFPA on 26 January 2014, she made filings to OAIS that she described as “complaints” against the UNFPA Chief, DHR and UNFPA Legal Office on 2 October 2014 and 10 December 2014 respectively, followed by complaints against the UNFPA Executive Director on 23 December 2014 and 13 February 2015, as evidenced in the facts section of this judgment. She also filed a “complaint on conflict of interests” concerning the handling of her management evaluation requests on 8 October 2014.

19. Based on the above, it is established with no doubt that she filed her first complaint almost nine months after her separation. In this respect, the Tribunal observes that sec. 9.3.1 (Time limits) of the 2013 UNFPA policy on Harassment, Sexual Harassment and Abuse of Authority, provides as follows:

A formal complaint of Harassment, Sexual Harassment or Abuse of Authority may be addressed to the Director, DOS [Division of Oversight Services], by any Personnel within six (6) months from the date of the last incident of Harassment, Sexual Harassment or Abuse of Authority. These time limits may be extended by the Director, DOS, in exceptional cases.

20. Furthermore, the notion of “Personnel” is defined in sec. 3.1 of the Policy and englobes “UNFPA staff members”, as well as “Individual independent contractors”.

21. The Tribunal notes that as of her separation on 26 January 2014, the Applicant was neither a UNFPA staff member nor an individual independent contractor and, as a result, she had no legal standing to file formal complaints.

22. In addition to the above, if one takes the Applicant’s date of separation from service, 26 January 2014, as “the date of the last incident”, one cannot but conclude that any complaints under the Policy should have been filed by the end of July 2014. This was not so in the Applicant’s case, and what she characterized as complaints, filed initially as of 2 October 2014, cannot but be considered untimely. Additionally, there is no indication on file that any extension of time limits was exceptionally granted to the Applicant by the Director, DOS.

23. Based on the above, the Tribunal concludes that the Applicant's filings were not receivable by OAIS on two grounds, and that OAIS inaction did not result in a breach of any of the Applicant's rights. It follows that the Tribunal cannot but reject the present application.

24. The Tribunal observes that the issues discussed above are matters of law, which may be adjudicated even without serving the application to the Respondent for reply, and even if they were not raised by the parties (see *Chahrour* 2014-UNAT-406, *Christensen* 2013-UNAT-335). Accordingly, the Tribunal deems it appropriate, on its own initiative and in accordance with art. 9 of its Rules of Procedure, to decide the present case by way of summary judgment.

Conclusion

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

The application is rejected in its entirety.

(Signed)

Judge Thomas Laker

Dated this 19th day of May 2015

Entered in the Register on this 19th day of May 2015

(Signed)

René M. Vargas M., Registrar, Geneva