



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2016/050

Judgment No.: UNDT/2016/103

Date: 28 July 2016

Original: English

Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

FAYEK

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Joseph Grinblat

Counsel for the Respondent:
ALS/OHRM

Introduction

1. On 10 July 2016, the Applicant, a staff member of the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA), filed an application with the United Nations Dispute Tribunal (the Tribunal) contesting the decision to close the case after investigation of her complaint against her supervisor and the then Director of the News and Media Division of the Department of Public Information (DPI) for prohibited conduct under ST/SGB/2008/5 (prohibition of discrimination, harassment including sexual harassment, and abuse of authority). The Applicant also contests the decision not to grant her compensation for the damages that she allegedly suffered.

2. The Applicant is seeking: (i) compensation in the amount of six months salary for the damages that she has suffered; and (ii) compensation in the amount of two years salary for the financial damage that she has suffered for not being promoted to the P-4 level in DPI.

Procedural history

3. The Applicant joined the Organization on 1 August 2000 as a Radio Producer at the P-3 level in the French Language Unit, Radio Section, Radio and Television Service, News and Media Division, Department of Public Information (DPI). At the time of the present application, she is serving as Chief, UN Radio Guira FM at the P-4 level at MINUSCA.

4. On 4 April 2013, the Applicant filed a complaint of prohibited conduct against the Chief of the French Language Radio and the then Director of the News and Media Division of DPI.

5. On 9 April 2014, a fact-finding panel was established to review the Applicant's allegations. On 17 March 2015, the panel submitted its report with the outcome of the investigation.

6. By letter dated 11 April 2016, the Under-Secretary-General for Communications and Public Information informed the Applicant of the conclusion of the investigation and the actions taken by the Office of Human Resources Management (OHRM) in relation to her allegations. The case in relation to the Applicant's allegations was closed.

7. On 10 July 2016, the Applicant filed an application with the Tribunal.

Preliminary matters

8. Pursuant to article 8.4 of the UNDT Rules of Procedure, the Registrar "shall transmit a copy of the application to the respondent and to any other party a judge considers appropriate" after ascertaining that the application is in compliance with articles 8.1 to 8.3 of the Rules of Procedure. The issue of receivability, however:

[...] 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 *Lee* UNDT/2013/147)¹.

9. This Tribunal endorses the views set out in *Lee* UNDT/2013/147. After a review of the application and its supporting documents, the Tribunal deems it appropriate to decide on the application, without first transmitting a copy of the application to the Respondent for a reply.

Considerations

10. The Tribunal observes that the Applicant indicated in her application that she did not submit a request for management evaluation of the contested decision, which raises the issue of the receivability of the Application.

11. Pursuant to article 8.1(c) of the UNDT Statute, the jurisdiction of the Tribunal can only be exercised if the contested administrative decision has previously been submitted for management evaluation, where required.

¹ See also *Christensen* 2013-UNAT-335 and *Kostomarova* UNDT/2014/027.

12. The requirement of management evaluation is set out in staff rule 11.2, which 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 management evaluation of the administrative decision* (emphasis added).

By way of exception:

(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.

13. Management evaluation is a mandatory administrative review to be undertaken prior to the submission of an application to the Tribunal and it is not open to the Tribunal to waive this requirement or make any exception to it (see *Samardzic* 2010-UNAT-072, *Trajanovska* 2010-UNAT-074, *Ajdini* 2011-UNAT-108).

14. It is clear from the Application and its supporting documents that the Applicant contests the closure of her case concerning allegations of prohibited conduct without granting her compensation for the damages she allegedly suffered, as communicated to her by letter dated 11 April 2016. 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. Therefore, the Applicant should have requested management evaluation of the contested decision but failed to do so, as clearly indicated in her application.

15. As a consequence, in the absence of a management evaluation request, the Tribunal rejects the present application as not receivable.

Decision

16. The Tribunal concludes that the application is not receivable and is therefore dismissed.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 28th day of July 2016

Entered in the Register on this 28th day of July 2016

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi