



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas

NIELSEN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

UNDP

Introduction

1. By application filed on 4 September 2016, the Applicant, a former staff member of the United Nations Development Programme (“UNDP”) contests the decision of the Office of Audit and Investigations (“OAI”), UNDP, not to initiate an investigation into her complaints of harassment against Mr. K., one of her former colleagues.

Facts

2. The following facts are taken from the Applicant’s submissions to the Tribunal in the instant case, and from the judgments of this Tribunal in respect of other cases involving the Applicant which, as the Applicant states, are inter-related.

3. While she was working at UNDP in 2010-2012, the Applicant lodged a number of complaints of harassment with OAI against Mr. K..

4. The Applicant stopped working with Mr. K. on 30 April 2012, when she was reassigned to another team in UNDP.

5. By e-mail of 8 October 2012, an Investigations Specialist, OAI, informed the Applicant that after a thorough review of the documentation she provided, “it appear[ed] that the conflicts [she] had with [Mr. K.] w[ere] more management related, and therefore should have been dealt with by management while [she was] working in that unit”. Therefore, OAI notified the Applicant that it would not initiate an investigation into her complaint against Mr. K. and that the file would be closed.

6. On 28 January 2013, the Applicant entered the service of UNFPA 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.

7. On 13 June 2016, the Applicant requested management evaluation of “[t]he decision of [OAI] not to trigger the investigation in regards to continuous harassment toward [her] from UNDP/GIA Unit employee, [Mr. K.]”. The Applicant did not receive any response to her request for management evaluation.

8. On 4 September 2016, the Applicant filed this application with the Dispute Tribunal, challenging “[t]he decision of the UNDP Investigation Office to trigger (sic.) the investigation and not to admit the fact of harassment from Mr. [K.] toward [her] in 2010-2012”.

9. On 11 September 2016, the Applicant filed additional observations, without leave from the Tribunal.

Applicant’s submissions

10. The Applicant’s principal contentions are:

a. She submitted sufficient evidence that during the time she worked at UNDP, in 2010-2012, Mr. K. harassed her and created a hostile working environment, but OAI failed to fulfil its duty to investigate her complaints;

b. As a result of Mr. K.’s actions, the Applicant’s contract with UNFPA was not extended and she lost other opportunities to get a fixed-term appointment in other United Nations agencies;

c. The Applicant requests the Tribunal to:

i. “[R]eview and reach a conclusion in respect of the behaviour of [Mr. K.]”;

ii. Award her compensation for “[her] work and time used on providing proof to OAI (...) as well as for preparation of this submission”; and

iii. Order UNDP to give her a fixed-term appointment or, in the alternative, “a long-life pension of USD4,000 per month”.

Consideration

11. The issue of an application's receivability is a matter of law that may be assessed even if not raised by the parties, and without serving the application to the Respondent for reply (see *Gehr* 2013-UNAT-313, *Christensen* 2013-UNAT-335).

12. Bearing this in mind, and in light of the circumstances of the case, the Tribunal deems appropriate to rule on the application by summary judgment, in accordance with art. 9 of its Rules of Procedure, without serving the application to the Respondent and requesting his reply.

13. The Appeals Tribunal held in *Massabni* 2012-UNAT-238 that it is part of the duties and of the inherent powers of a Judge to adequately interpret and comprehend the applications submitted by the parties, and to "identify what is in fact being contested". In practice, this is all the more important when the Applicant is self-represented and not legally trained.

14. In her application, the Applicant identifies the contested decision as "[t]he decision of [OAI] to trigger (sic.) the investigation and not to admit the fact of harassment from Mr. [K.] toward [her] in 2010-2012". She attaches to her submissions a decision of 8 October 2012 from an Investigations Specialist, OAI, declining to initiate an investigation into her complaints against Mr. K..

15. The Tribunal notes that the Applicant vaguely alludes to the fact that her "latest complaints on misconduct" against Mr. K. have remained unanswered, but she does not provide any further detail about such complaints. It is also noted that in her additional observations of 11 September 2016, the Applicant reiterates that the present case concerns Mr. K. but refers to a complaint on abuse of authority she had placed against her former supervisor at UNDP, Mr. D..

16. Having reviewed the application and its annexes, the Tribunal understands that the contested decision in the instant case is the OAI decision of 8 October 2012 not to initiate an investigation into the Applicant's complaint of harassment against Mr. K..

17. Pursuant to Staff Rule 11.2 and art. 8.1(ii)(c) of the Tribunal's Statute, for an application to be receivable, the applicant must first submit a request for management evaluation within the applicable time limit, which is "60 calendar days from the date on which the staff member received notification of the administrative decision to be contested".

18. Pursuant to art. 8.3 of the Tribunal's Statute, "[t]he Dispute Tribunal shall not suspend or waive the deadlines for management evaluation". Consequently, an application before the Dispute Tribunal is not receivable if the underlying request for management evaluation was itself time-barred (*Costa* 2010-UNAT-036, *Samardzic* 2010-UNAT-072, *Trajanovska* 2010-UNAT-074, *Adjini et al.* 2011-UNAT-108). Also, it is established jurisprudence that time limits for formal contestation are to be strictly enforced (see *Mezoui* 2010-UNAT-043, *Al Mulla* 2013-UNAT-394, *Samuel Thambiah* 2013-UNAT-385, *Romman* 2013-UNAT-308, *Kissila* 2014-UNAT-470 and *Kazazi* 2015-UNAT-557).

19. Art. 8.4 further provides that "an application shall not be receivable if it is filed more than three years after the applicant's receipt of the contested administrative decision."

20. In this case, the Applicant was notified of the impugned decision by email of 8 October 2012; she filed her request for management evaluation on 13 June 2016. By that time, the 60-day time limit had long expired. The application is therefore irreceivable *ratione materiae* (*Egglesfield* 2014-UNAT-402).

21. Furthermore, the application was filed on 4 September 2016, which is more than three years after the Applicant received notification of the contested decision. It follows that the application is also irreceivable *ratione temporis* pursuant to art. 8.4 of the Tribunal's Statute.

22. Observing that the facts giving rise to the Applicant's complaint of harassment date back to 2010-2012, and that the deadline for the Applicant to challenge the impugned decision has long elapsed, the Tribunal cannot but conclude that the application is manifestly unfounded and frivolous.

23. Furthermore, the Tribunal notes that this is the fifteenth application filed by the Applicant since she separated from the Organization, in what is now a pattern of lengthy applications that confusingly describe series of unrelated events and raise a myriad of matters falling outside the scope of the Tribunal's judicial review. The Applicant has been reminded on a number of occasions to clearly identify the administrative decision(s) she contests and the grounds for challenging them, as required by art. 8.2 of the Tribunal's Rules of Procedure (see, e.g., Order No. 5 (GVA/2016 of 6 January 2016) and Order No. 180 (GVA/2016) of 2 September 2016). She was also warned by the Appeals Tribunal that her raising matters falling wholly outside of the appellate proceedings concerned "verge[d] on an abuse of the appeal process" (*Nielsen* 2015-UNAT-542).

24. In this context, the Tribunal underlines that it can only decide on the merits of an application if an applicant is diligent, duly substantiates his or her application by providing all information required by the Tribunal's Rules of Procedure, respects the deadlines enshrined in the Rules of Procedure and acts timely.

25. In view of the foregoing, the Applicant is hereby warned that should her failure to observe the minimal requirements for filing an application before the Tribunal continue, the Tribunal may award costs against her to prevent an abuse of proceedings.

Conclusion

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

The application is rejected in its entirety.

(Signed)

Judge Teresa Bravo

Dated this 13th day of September 2016

Case No. UNDT/GVA/2016/083

Judgment No. UNDT/2016/122

Entered in the Register on this 13th day of September 2016

(Signed)

René M. Vargas M., Registrar, Geneva