



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2017/006
Judgment No.: UNDT/2017/005
Date: 30 January 2017
Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

AHMED

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
ALS/OHRM

Introduction

1. On 23 January 2017, the Applicant, a former staff member of the United Nations Operation in Cote d'Ivoire (UNOCI), filed an application with the United Nations Dispute Tribunal (the Tribunal) contesting the decision not to select him for the position of supply officer at the P-3 level in the United Nations Mission in the Republic of South Sudan (UNMISS) in Juba, South Sudan.

2. The Applicant is seeking to be selected and appointed to the position of supply officer at the P-3 level in UNMISS.

Procedural history

3. The Applicant served as Fuel Officer, Supply Section at UNOCI until 27 September 2016, when he was separated from service due to the downsizing of the Mission.

4. The Applicant applied for the position of supply officer at the P-3 level in UNMISS in Juba, South Soudan. He was interviewed on 15 November 2016.

5. On 20 December 2016, he was informed of the decision not to recommend him for the vacant position.

6. On 23 January 2017, the Applicant filed an application with the Tribunal.

Preliminary matters

7. 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.

8. 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 it to the Respondent for a reply.

Considerations and judgment

9. The Tribunal observes that the Applicant indicated in his application that he did not submit a request for management evaluation of the contested decision, which raises the issue of the receivability of this application.

10. 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.

11. 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

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

completion of a disciplinary process is not required to request a management evaluation.

In relation to time-limits:

(c) A request for a management evaluation shall not be receivable by the Secretary-General unless *it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested*. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

12. The jurisdiction of the Tribunal can only be exercised if the contested administrative decision has previously been submitted for management evaluation, where required. The Tribunal may not waive this requirement or make any exception to it (see *Samardzic* 2010-UNAT-072, *Trajanovska* 2010-UNAT-074, *Ajdini* 2011-UNAT-108).

13. It is clear from the Application and its supporting documents that the Applicant contests the decision not to select him for the position of supply officer at the P-3 level in UNMISS, as communicated to him by email dated 20 December 2016. The contested decision 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).

14. The Applicant ought to have requested management evaluation of the contested decision prior to filing this application but failed to do so. The Tribunal notes that the time limit of 60 calendar days from 20 December 2016, the date on which the Applicant received notification of the administrative decision that he wishes to contest have not yet elapsed.

15. Considering that the Applicant is still within time to request management evaluation, he is advised to do so before filing a new application before the Tribunal, if he wishes to do so.

16. Accordingly, in the absence of a management evaluation request, the Tribunal refuses the present application as not receivable.

(Signed)

Judge Nkemdilim Izuako

Dated this 30th day of January 2017

Entered in the Register on this 30th day of January 2017

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi