



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

NWOGU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
UNDP

Introduction

1. The Applicant is a staff member of the United Nations Development Programme.
2. On 19 March 2018, she filed an application contesting the decision to abolish her P-4 Gender Specialist post and the recruitment of a P-5 Gender Advisor. The Applicant states that she does not know when the contested decision was taken and that she became aware of it on 16 January 2018.
3. The Applicant filed a management evaluation request of the contested decision on 13 March 2018 and had not yet received a response at the time of filing this application.

Considerations

4. The sole legal issue arising for consideration at present is whether this application is receivable in view of the fact that the Applicant's management evaluation request is pending.
5. Article 8.4 of the UNDT Rules of Procedure requires the Registrar to transmit a copy of the application to the respondent and to any other party a judge considers appropriate after ascertaining that the application complies with arts. 8.1 to 8.3 of the Rules of Procedure. However, the Tribunal may consider matters of receivability on a priority basis without first transmitting a copy of the application to the Respondent or awaiting the Respondent's reply before taking action to consider the claim.¹
6. Article 8.1(c) of the UNDT Statute stipulates that the jurisdiction of the Dispute Tribunal can only be invoked if the contested administrative decision has previously been submitted for management evaluation. Staff rule 11.2(a) provides that a staff member wishing to formally contest an administrative decision is required to submit a written request for management evaluation to the Secretary-

¹ See for example in *Hunter* UNDT/2012/036, *Milich* UNDT/2013/007, *Masykkanova* UNDT/2013/033, and *Kalpokas Tari* UNDT/2013/180.

General. Such a request is a mandatory first step for an applicant prior to the submission of an application to the Dispute Tribunal. It is not open to the Tribunal to waive this requirement or make any exception to it.²

7. In the present case, the Applicant indicates that she requested for management evaluation on 13 March 2018. She had not yet received a management evaluation response before submitting this application.

8. In *Omwanda*, the application had been filed before the Management Evaluation Unit (MEU) completed its management evaluation and the time limit for completing such a response did not yet expire, the application was dismissed as premature. The UNDT held that:

[a] matter cannot be before the MEU and the Dispute Tribunal simultaneously [...]” and that “[a]llowing applicants to circumvent this process and file applications with the Tribunal before the deadline for a response to a request for management evaluation has passed would contravene the Tribunal’s Statute and Rules of Procedure, undermine the time lines set out in the Staff Rules, and would be contrary to the intentions of the General Assembly.³

9. There is nothing to distinguish the present case from *Omwanda* since MEU is yet to complete its management evaluation and the time limit for completing the response has not yet expired.

10. As this Tribunal held in *Steinbach*,

[...] although staff rule 11.2 and art. 8 of UNDT Statute require only “requesting” management evaluation and not actually obtaining it, the Appeals Tribunal stressed the obligation to await management evaluation, which process provides the Administration an opportunity to correct any errors in an administrative decision and resolve disputes without the necessity to involve judicial review.³¹ Moreover, another rationale noted by the Appeals Tribunal for management evaluation and the attendant requirement to wait for the period necessary to obtain it [...], is that it provides for the applicant an opportunity to consider reasons on the part of the Administration prior to drafting and filing of the application and in this way fosters rationality and completeness of the argument before the Tribunal. In view of this reasoning, the Tribunal considers that the answer to the

² *Karambizi* UNDT/2018/001, *Samardzic* 2010-UNAT-072, *Trajanovska* 2010-UNAT-074, *Ajdini et al* 2011-UNAT-108.

³ *Omwanda* UNDT/2016/098/Corr.1 at para. 24.

debated question is negative, and that the application which had been filed without awaiting the result of management evaluation (or expiry of the time limit for it) remains not receivable also after the management evaluation has been issued. Such situation, for an applicant who wishes to pursue his or her claim before the Dispute Tribunal, calls for a new filing made in accordance with the applicable time limits.⁴

11. This application is premature. The Tribunal makes no comment on the merits or otherwise of the substantive complaint which will be adjudicated on its merits if, or when, a receivable claim is made

Judgment

12. The application is dismissed as it is not receivable.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 21st day of March 2018

Entered in the Register on this 21st day of March 2018

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi

⁴ *Steinbach* UNDT/2018/034 para. 47, citing to, among others, *Kouadio* 2015-UNAT-558 and *Neault* 2013-UNAT-345.