



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

MORALES

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:

Self-represented

Counsel for Respondent:

N/A

Introduction

1. On 30 October 2019, the Applicant, a staff member of the United Nations Office in Vienna (“UNOV”), filed an application with the Tribunal contesting the decision not to select him for the position of “Documents Management Assistant (Correspondence and Distribution)” at the G-6 level in the “Department for General Assembly and Conference Management [in Vienna] (Job Opening 113076)”.

Facts

2. The Applicant informs he was notified of the contested decision on 17 October 2019. He requested management evaluation of the same decision on 29 October 2019.

3. On 30 October 2019, the Applicant filed the present application on the merits before this Tribunal.

Consideration

Preliminary observation

4. Pursuant to article 8.4 of the Tribunal’s 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. Under art. 10 of the Tribunal’s Rules of Procedure, the Respondent shall have 30 calendar days to submit a reply.

5. The Tribunal has, on several occasions, considered 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 (see *Hunter* UNDT/2012/036, *Milich* UNDT/2013/007, *Masykkanova* UNDT/2013/033, *Kalpokas Tari* UNDT/2013/180, *Karambizi* UNDT/2018/001, *Madi* UNDT-2018-006 and *Nwogu* UNDT/2018/041).

6. After a review of the application and its supporting documents, the Tribunal deems that the present matter can be determined on a priority basis without first transmitting a copy of the application to the Respondent for a reply.

Receivability

7. The issue arising for consideration is the receivability of the present application. In *Christensen* 2013-UNAT-335, the United Nations Appeals Tribunal (“the Appeals Tribunal”) held that “the UNDT is competent to review its own competence or jurisdiction in accordance with Article 2(6) of its Statute” when determining the receivability of an application. The Appeals Tribunal went on to state:

This competence can be exercised even if the parties or the administrative authorities do not raise the issue, because it constitutes a matter of law and the Statute prevents the UNDT from receiving a case which is actually non-receivable.

8. The Tribunal has, accordingly, chosen to proceed by way of a judgment on receivability as it is competent to raise the issue of jurisdiction *sua sponte*.

9. Art. 8 of the Tribunal’s Statute sets forth the requirements for an application to be receivable. Specifically, art. 8(1)(c) provides that an application “shall be receivable” if “[a]n applicant has previously submitted the contested administrative decision for management evaluation, where required”.

10. However, the Tribunal considers it appropriate to remind the Applicant, as a self-represented staff member, that the submission of a request for management evaluation does not grant an immediate right to file a substantive application with the Tribunal. Under art. 8.1(c) and 8.1(d)(i) of the Tribunal’s Statute, a substantive application is receivable if the contested decision has been submitted for management evaluation **and** the application is filed within 90 calendar days of the applicant’s receipt of the response by management to his or her submission; or within 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided.

11. Staff Rule 11.2(d) stipulates that the Secretary-General’s response, reflecting the outcome of the management evaluation, “shall be communicated in writing to the staff member within 30 calendar days of receipt of the request for management evaluation if the staff member is stationed in New York, and within 45 calendar

days of receipt of the request for management evaluation if the staff member is stationed outside of New York”.

12. The Appeals Tribunal has held that the purpose of management evaluation is to afford the Administration the opportunity to correct any errors in an administrative decision so that judicial review of the administrative decision is not necessary (see *Pirnea* 2013-UNAT-311). This procedure is conducive to good administration and prevents the Tribunal from being clogged with cases unnecessarily (see *Akunamambo* UNDT/2014/002).

13. In the current case, the Applicant requested management evaluation of the impugned decision only three days ago, on 29 October 2019. He has not yet received a response to his request for management evaluation and the time limit for completing such evaluation has not yet expired. In the circumstances, his substantive application, filed on 30 October 2019, is premature.

14. However, he may, if he still wishes to contest the matter, file an application within 90 calendar days of receipt of the response by management to his request for management evaluation or within 90 calendar days of the expiry of the response period for the management evaluation if no response to the request is provided. Should the Applicant be inclined to submit a fresh application it will be considered on its merits and without prejudice to the contents of the current application.

Conclusion

15. In view of the foregoing, the Tribunal DECIDES that the present application is dismissed as it is not receivable.

(Signed)

Judge Teresa Bravo

Dated this 1st day of November 2019

Case No. UNDT/GVA/2019/063

Judgment No. UNDT/2019/158

Entered in the Register on this 1st day of November 2019

(Signed)

René M. Vargas M., Registrar, Geneva