



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2018/078

Judgment No.: UNDT/2019/162

Date: 15 November 2019

Original: English

Before: Judge Margaret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye-Berko

GUSAROVA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Bart Willemsen, UNICEF
Chinonyelum Esther Uwazie, UNICEF

Introduction

1. At the time of application, the Applicant was serving as a Human Resource Manager at the UNICEF East-South Africa Regional Office (ESARO) in Nairobi, Kenya.
2. On 25 July 2018, the Applicant filed an application contesting the decision of the Management Evaluation Unit (MEU) to uphold the decision of the Office of Internal Audit and Investigations (OIAI) to dismiss her claim of abuse of authority and harassment.
3. The Respondent replied to the application on 7 September 2018. As a preliminary issue, the Respondent challenges the receivability of the application.
4. The Applicant filed her submissions in response on 25 February 2019.

Facts

5. The Applicant's claim for abuse of authority against her supervisor was rejected by the OIAI on grounds that there was no evidence of abuse of authority. An addendum to the claim did not change OIAI's assessment of the situation.
6. The Applicant submitted a request for management evaluation, requesting that OIAI rescind its rejection of her claim and conduct an investigation as prescribed by CF/EXD/2012-0007, among other requests.
7. The request was rejected by MEU because the procedure that OIAI followed in assessing her allegations was not improper. The Respondent did not find that the conclusion of the OIAI was manifestly unreasonable or otherwise irrational.

Considerations

8. The Tribunal's jurisdiction under art. 2 of its Statute is to hear and pass judgment on an application filed by an individual to appeal an administrative decision

that is alleged to be in non-compliance with the terms of appointment or the contract of employment.

9. Article 8.1(c) of the UNDT Statute provides that an application shall be receivable if an applicant has previously submitted the contested administrative decision for management evaluation, where required.

10. It is the Applicant's submission that there is no material difference between the administrative decision that she is challenging - that is, the Respondent's decision to dismiss her claim on abuse of authority and harassment – and the Respondent's decision to dismiss her request for management evaluation of the same impugned decision. In other words, the distinction which the Respondent seeks to draw to have her claim dismissed on grounds of receivability is one of semantics. Considering that the Applicant is self-represented, the Tribunal is obliged to adequately interpret and comprehend the application with a view to identifying what is in fact being contested.¹

11. The Tribunal notes that though the application against the MEU's decision to dismiss a request for management evaluation and claim of abuse of authority and harassment² is different from the decision of the OIAI to dismiss a claim on abuse of authority and not to conduct an investigation,³ the decision which is being contested before the Tribunal is principally the same as the one which was contested at the ME level, with only a few editorial differences.

12. The application is receivable.

¹ *Massabni* 2012-UNAT-238.

² Application, para. 14.

³ *Ibid.* annex 8.

(Signed)

Judge Margaret Tibulya

Dated this 15th day of November 2019

Entered in the Register on this 15th day of November 2019

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi