UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2018/066
Judgment No.: UNDT/2019/171
Date: 6 December 2019
Original: English

Before: Judge Francis Belle

Registry: New York

Registrar: Nerea Suero Fontecha

MOUSSA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Elizabeth Gall, ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a Chief Finance and Budget Officer at the P-4 level with the United Nations Peacekeeping Force in Cyprus ("UNFICYP"), contests the imposition of an administrative measure of written reprimand by the Special Representative of the Secretary-General ("SRSG") in Cyprus.

2. For the reasons below, the Tribunal finds that the application is not receivable.

Facts

3. On 9 August 2017, the Applicant received a memorandum titled, "Report of Fact-Finding Panel appointed to investigate allegations of possible misconduct – Letter of Reprimand" from the SRSG, UNFICYP ("the letter of reprimand"). By this memorandum, the Applicant was informed that following an investigation by a fact-finding panel, it was determined that "there is no evidence to substantiate that [his] actions constitute serious misconduct warranting disciplinary measures. At the same time, it was also determined that [the Applicant's] handling of some of the issues which form the underlying basis for the allegations constitutes a source of concern for which administrative action should be undertaken". The SRSG informed him that "[t]he present communication should therefore be consisted a formal reprimand for the exhibited behaviour … this Letter of Reprimand shall be maintained in the non-privileged portion of [the Applicant's] confidential personnel file, along with any comments [he] may make". The memorandum concluded by stating that "[p]lease note that this is an administrative rather than a disciplinary action. Should [the Applicant] wish to make any comments on the content of this communication, [he] may do so within fourteen (14) days of the date [he] receive[s] this memorandum".

4. On 29 August 2017, the Applicant submitted his comments on the letter of reprimand.

5. On 20 September 2017, the Applicant met with the SRSG regarding the letter of reprimand where the SRSG confirmed that the letter of reprimand would be

included in the non-privileged portion of his confidential personnel file together with his comments. In the email the Applicant sent to the SRSG on the same day, the Applicant wrote that he would appeal the decision under ST/AI/371/Amend.1 and Chapter XI of the Staff Rules.

6. On 27 October 2017, the Applicant filed the present application.

Consideration

7. In the present case, the Respondent submits that the application is not receivable since the Applicant has not requested management evaluation of the contested decision as required under staff rule 11.2(a) and he is not exempt from this requirement under staff rule 11.2(b). In light of the Respondent's challenge to the receivability of the application, the Tribunal will first address this issue.

8. Article 8.1(c) of the Statute of the Dispute Tribunal provides that an application is receivable if an applicant previously submitted the contested decision for management evaluation, where required.

9. Staff rule 11.2, which sets forth the rules about the management evaluation, provides:

> (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 … shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.
>
> (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 completion of a disciplinary process is not required to request a management evaluation.

10. In this case, the question is whether the contested decision is "a decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure

pursuant to staff rule 10.2 following the completion of a disciplinary process", which would then determine whether the Applicant was required to request a management evaluation or not.

11. The Respondent argues that the contested decision in this case does not fall under staff rule 11.2(b) because: (a) the decision was not taken at Headquarters in New York; and (b) the decision was not taken following the completion of a disciplinary process. The Tribunal agrees with the Respondent on both issues.

12. First, the decision was clearly not taken at Headquarters in New York since the letter of reprimand dated 9 August 2017 was issued by the SRSG in Cyprus. The Applicant submitted his comments on the letter of reprimand to the SRSG and had a meeting with the SRSG, which shows that he also understood that the decision was taken by the SRSG in Cyprus.

13. Second, the decision was not taken following the completion of a disciplinary process. The letter of reprimand dated 9 August 2017 clearly indicated that "there is no evidence to substantiate that [his] actions constitute serious misconduct warranting disciplinary measures" and the letter "is an administrative rather than a disciplinary action". Staff rule 10.3(a), which sets forth the due process in the disciplinary process, provides that "[t]he Secretary-General may initiate the disciplinary process where the findings of an investigation indicate that misconduct may have occurred". The letter of reprimand conveyed to the Applicant that there was no evidence indicating that serious misconduct may have occurred and therefore the disciplinary process was not even initiated (see, for example, *Elobaid* 2018-UNAT-822, where the Appeals Tribunal found the issuance of a written reprimand lawful which was imposed following a preliminary investigation without the disciplinary process).

14. The Applicant makes two arguments on the receivability matter, and the Tribunal finds that both arguments are without merit. First, the Applicant claims that a copy of ST/AI/371/Amend.1 (Revised disciplinary measures and procedures) was attached to the letter of reprimand and he should have been afforded the due process rights under ST/AI/371/Amend.1. However, the Tribunal sees no evidence that

ST/AI/371/Amend.1 was attached to the letter of reprimand, although his communications in response to the letter of reprimand show that he incorrectly relied on ST/AI/371/Amend.1. In any event, ignorance of the law is no excuse and staff members are deemed to be aware of the regulations and rules applicable to them (see, for example, *Diagne et al.* 2010-UNAT-067; *Staedtler* 2015-UNAT-546). Second, the Applicant argues that under staff rule 10.3(c), which he claims to be inconsistent with staff rule 11.2, he can submit an application challenging the imposition of non-disciplinary measure directly to the Dispute Tribunal. However, staff rule 10.3(c), like staff rule 11.2, states that only disciplinary or non-disciplinary measures imposed following the completion of a disciplinary process can be directly challenged to the Dispute Tribunal, which is not applicable to the present case as explained above.

15. Therefore, the Applicant was required to request management evaluation of the contested decision, which he failed to do and hence the present application is not receivable.

Conclusion

16. The Tribunal rejects the application as not receivable.

(Signed)

Judge Francis Belle

Dated this 6th day of December 2019

Entered in the Register on this 6th day of December 2019

(Signed)

Nerea Suero Fontecha, Registrar, New York