



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

VITESKIC

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Julia Kyung Min Lee, OSLA

Counsel for Respondent:

Steven Dietrich, AAS/ALD/OHRM, UN Secretariat

Introduction

1. The Applicant challenges the decision to issue him a written reprimand. He also contests the following decisions connected, in his view, to the written reprimand:

a. Withholding of the investigation report on which the written reprimand is based; and

b. Uploading all documents related to the underlying investigation to the Misconduct Tracking System (“MTS”) of the Department of Peacekeeping Operations (“DPKO”), Department of Field Support (“DFS”).

2. The application was served on the Respondent on 15 January 2018, with a deadline for reply set to 26 February 2018. By joint motion of 16 February 2018, the parties informed the Tribunal that they were engaged in efforts to resolve the dispute informally and requested the suspension of proceedings.

3. By Order No. 42 (GVA/2018) of 19 February 2018, the Tribunal suspended proceedings until 12 March 2018, at which date the Respondent was to file his reply if no settlement between the parties could be reached.

4. On 12 March 2018, the Respondent filed his reply in which he, *inter alia*, contested the application’s receivability *ratione materiae*.

Facts

5. From 6 April 2007, the Applicant served on a series of fixed-term appointments with the United Nations Development Programme (“UNDP”), as a Field Security Specialist at various duty stations.

6. From 2 August 2013, the Applicant served as Chief Security Officer with the United Nations Mission in Kosovo (“UNMIK”) under an appointment with UNDP. The Applicant resigned from UNDP in November 2016 and began employment with UN Women as a Global Security Specialist based in Brussels.

7. By email of 21 February 2017, the Officer-in-Charge (“OIC”), Special Investigation Unit (“SIU”), UNMIK, informed the Applicant that a United Nations Secretariat staff member had complained to the Conduct and Discipline Team (“CDT”), UNMIK, alleging unprofessional behaviour on the Applicant’s part during an incident on 1 November 2016 at UNMIK’s Headquarters in Pristina. The OIC also advised the Applicant that he was the subject of an SIU’s fact-finding investigation in relation to said complaint conducted within the framework of ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority).

8. By email of 14 July 2017, a Conduct and Discipline Officer (“the C&D Officer”), UNMIK, informed the Applicant of the investigation outcome, writing *inter alia*, that the allegations made against the Applicant were unsubstantiated and that, however, “the manner in which [the Applicant addressed] and interacted with the complainant did appear intimidating and therefore inappropriate”. The Applicant was also advised that it had been decided “to close the matter without further action”, that “all relevant documents [had been] uploaded into the Misconduct Tracking System” and that the email in question served as official notification.

9. By email of 18 July 2017, the Applicant formally requested a copy of the investigation report to the C&D Officer. By return email of the same day, the latter responded that no further information would be shared due to the “confidentiality of proceedings”.

10. On 12 September 2017, the Applicant requested management evaluation of the decisions set forth in para. 1 above. He subsequently filed his application on the merits with this Tribunal on 25 January 2018.

Consideration

Receivability ratione materiae

11. The Respondent argues that the application is not receivable *ratione materiae* because no administrative decision within the meaning of article 2(1)(a) of the Dispute Tribunal's Statute has been taken affecting the Applicant's terms of appointment with either UNDP or UN Women.

Written reprimand

12. The Respondent underlines that the 14 July 2017 email does not constitute a written reprimand. He further notes that no written reprimand has been issued by an authorized official under staff rule 10.2 or following a fact-finding investigation under ST/SGB/2008/5 and that, in any event, said bulletin is not applicable to the Applicant because he is not a UN Secretariat staff member.

13. Moreover, the Respondent entered into evidence an email dated 25 January 2018 from the C&D Officer to the Applicant, which superseded the email sent to the latter on 14 July 2017 and, more importantly, without any comment with respect to the Applicant's behaviour vis-à-vis the complainant.

14. The Tribunal is satisfied that despite the Applicant's characterization of the contested decision as a "written reprimand" in his request for management evaluation and in his application, there was never a reprimand issued by an authorized official and, thus, there was no administrative decision to contest. The Tribunal therefore finds that the application is not receivable *ratione materiae* with respect to the 14 July 2017 email sent to the Applicant.

15. Even if the Tribunal were to accept that the above-mentioned email was a written reprimand, the record shows that it has been withdrawn and the matter has become moot.

Uploading of documents to MTS

16. The Respondent also entered into evidence a screenshot from the MTS showing that as per a memorandum dated 22 February 2018 from the Assistant Secretary-General, Department of Management, the record related to the investigation of the complaint made against the Applicant was deleted from that system.

17. The Tribunal is persuaded that with the deletion of the record in question this claim is moot.

18. In view of the above findings, the Tribunal does not find it necessary to examine the Applicant's challenge to the decision not to share with him the respective investigation report.

Applicant's motion for anonymity

19. When examining motions for anonymity, the Tribunal must balance the principles of transparency, access to information, openness and accountability with the need to protect personal data and/or information of a confidential and sensitive nature (see *Applicant* UNDT/2016/022, paras. 133 to 153).

20. In the present case, the Tribunal notes that the factual background provided in its decision does not reveal any material or information concerning the Applicant requiring protection. Consequently, the Tribunal finds no grounds warranting anonymization.

Conclusion

21. In view of the foregoing, the Tribunal DECIDES:

- a. The application is dismissed as irreceivable *ratione materiae* with respect to the Applicant's challenge of the 14 July 2017 email that he characterized as a written reprimand;

- b. The application is dismissed as moot concerning the decision to upload to MTS all documents related to the investigation of the complaint filed against the Applicant; and
- c. The Applicant's motion for anonymity is rejected.

(Signed)

Judge Teresa Bravo

Dated this 17th day of December 2019

Entered in the Register on this 17th day of December 2019

(Signed)

René M. Vargas M., Registrar, Geneva