



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

SIMIYU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
AAS/ALD/OHR

Introduction

1. The Applicant is a Logistics Officer at the P-3/10 level at the United Nations Support Office in Somalia (UNSOS).¹

2. By an application filed on 10 January 2020, she contests what she terms as “misconduct allegations” against her.²

Facts

3. On 21 May 2019, the Head, UNSOS sent a facsimile to the United Nations Under-Secretary-General, Department of Management Strategy, Policy and Compliance (USG/DMSPC). The facsimile contained allegations of possible misrepresentation of academic qualifications in the Applicant’s Personal History Profile (PHP).³

4. On 23 December 2019, the Officer-in-Charge, Administrative Law Division, Office of Human Resources, requested the Applicant, to provide, within one month of receiving the request, a written statement or explanations in response to allegations made against her.⁴

5. There is no record on the file indicating that the Applicant has yet replied to the said request.

Applicant’s submissions

6. The Applicant submits that when she joined the United Nations in 2006, the Organization did not verify her academic credentials. The fault is with the Organisation which did not undertake the due diligence then. The Applicant also contends that she

¹ Application, section I

² Application, section V

³ Application, annex 1

⁴ Application, annex 2

only forgot to update her PHP to remove a Bachelor's Degree and put a Diploma. Further, her performance for the last 13 years has been satisfactory.⁵

Considerations

7. As a preliminary matter, the Tribunal notes that it is competent to raise a receivability issue on its own initiative, whether or not it has been raised by the parties (see, for instance, *O'Neill* 2011-UNAT-182, para. 31).

8. It is recalled that article 2(1)(a) of the UNDT Statute is being interpreted consistent with the notion of administrative decision adopted in *Andronov*, which reads:

An administrative decision is a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order". Thus, the administrative decision is distinguishable from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences.⁶

9. The Appeals Tribunal in *Nguyen-Kropp & Postica* emphasized that "initiating an investigation is merely a step in the investigative process and it is not an administrative decision which the UNDT is competent to review under 2 (1) of its Statute".⁷

10. Accordingly, it is not open for the Tribunal to entertain complaints against decisions that are not final and conclusive in the administrative course of procedure but constitute only prefatory acts, be it of a procedural or a substantive nature.

11. In the present application, the Applicant identifies the contested decision as "misconduct allegations" made against her. As stated above, it is clear that the

⁵ Application, section VIII

⁶ UN Administrative Tribunal Judgment No. 1247, *Andronov* (2004), para V

⁷ *Nguyen-Kropp & Postica* 2015-UNAT-509, para 34

Administration is yet to take a decision whether or not to discipline the Applicant. Allegations of misconduct are only a prefatory act, from which no direct consequences stem for the terms of the Applicant's employment.

12. The application is not receivable for want of a reviewable administrative decision.

JUDGMENT

13. The Application is dismissed and not receivable.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 14th day of January 2020

Entered in the Register on this 14th day of January 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi