



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2019/146

Judgment No.: UNDT/2020/099

Date: 29 June 2020

Original: English

Before: Judge Eleanor Donaldson-Honeywell

Registry: Nairobi

Registrar: Abena Kwakye-Berko

QASSEM

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:

Mohammed Abdou, OSLA

Counsel for Respondent:

Michael Appiateng, UNDP

Introduction

1. On 18 October 2019, the Applicant, a staff member with the UNDP Programme of Assistance to the Palestinian People (“PAPP”), filed an application to contest the Respondent’s “(1) decision to effectively strip him of the majority of his functions and duties, (2) the decision to move him from his duty station in Jerusalem to Ramallah, (3) the Administration’s failure to implement the decision dated 18 September 2018 regarding the outcome of the restructuring process”.

2. The Applicant’s case is that after 18 September 2018, he made repeated requests for reassignment of his functions and to be moved back to his duty station in Jerusalem. Then, on 8 May 2019, it became clear to him that UNDP had no intention to accede to his requests. He therefore cites 8 May 2019 as the date of the challenged decision. He requested management evaluation on 19 June 2019.

3. The Respondent filed his reply on 21 November 2019 in which he submits that the application is not receivable because the Applicant did not submit a timely request for management evaluation in accordance with United Nations staff rule 11.2(c). According to the Respondent, the Applicant submitted a request for management evaluation 214 calendar days after the 60-day deadline. Thus, the application to the UNDT is not receivable *ratione materiae*. In any event, the Respondent contends that the application is without merit.

4. The case was assigned to the undersigned Judge in June 2020.

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

Facts

6. The Applicant, at the time of the application, held a fixed-term appointment with UNDP PAPP as an Administrative Clerk/Dispatcher G-3/Step 10 level, which was due to expire on 31 December 2019. He first joined the UNDP PAPP on 14

November 2011 as an Administrative Clerk G-3/Step 5 level and his duty station was registered as East Jerusalem.

7. He continued to work there until November 2015 when, after he raised a complaint about the then Deputy Special Representative (“DSR”), he was transferred to a post at the same level, with similar responsibilities and terms of reference (“ToR”) at a different station, namely Ramallah. This move was not the Applicant’s choice, but he was informed that the transfer decision was made to avoid daily contact between him and Mr. Shawan, the DSR.

8. By email dated 3 November 2015, the above-mentioned details of the transfer and the fact that the Applicant would be supporting the Governance Team Projects Portfolio were confirmed in writing to the Applicant. He responded on the same day accepting the transition. He reported for work in Ramallah in early 2016, after the process addressing his complaint had been concluded; no harassment was found.

9. However, in April 2018, the Applicant complained of being given minimal tasks by the Governance Team and challenged the decision to remove him from the post for which he had been recruited by submitting a request for management evaluation. The management evaluation request was dismissed as time-barred because the Applicant had been transferred since November 2015.

10. In 2018, UNDP/PAPP underwent a restructuring process. By an email stream spanning 24 July 2018 to 25 July 2018, the Applicant made requests that his post not be affected by the restructuring, inquired as to whether the restructuring would involve movement from Ramallah to East Jerusalem, raised the issue of the disbandment of the Governance team suggesting that it meant reduced transportation unit duties for him and asking that he be allowed to perform all the functions for which he was originally recruited. During the back and forth communication within the email stream the Applicant was repeatedly informed that:

- a) While his duty station is Jerusalem, his place of work is Ramallah and the restructuring does not change that arrangement; and

b) UNDP/PAPP Transportation Unit is not managed from Ramallah but the Applicant's responsibility will relate to vehicle/fleet transportation management.

11. In response the Applicant wrote on 25 July 2018 acknowledging that the Transportation Unit would not be in Ramallah and indicating that he would manage his vehicle/fleet transportation function from wherever the Organization deemed necessary whether from Jerusalem or Ramallah.

12. This no-change position regarding the Applicant's ToR, duty station and place of work was officially communicated by letter dated 18 September 2018 and the Applicant affixed his signature accepting the post of Administrative Clerk with post number 4476. The duty station was indicated as East Jerusalem as it had always been.

13. Despite this acceptance of the no-change to his position the Applicant wrote on 2 October 2018 requesting that instead of continuing to work at the Ramallah location of the duty station he be moved to East Jerusalem. The response from the Organization was sent without delay on 3 October 2018 as follows:

For the VERY last time, your duty station is Jerusalem and your work station is Ramallah (for the long term). If you are unable to fulfill your functions or report to your work station, kindly decline the matching exercise. We will be happy to provide support to identify other employment opportunities. Please, we need to move on.

14. The Applicant continued during October 2018 to make enquiries about being moved to East Jerusalem. Further confirmations in writing were sent to him on 25 and 30 October 2018 that while his duty station was East Jerusalem his work station was Ramallah where he was expected to perform his duties. This position was reiterated in communication sent to the Applicant on 15 November 2018.

15. Thereafter, according to the Applicant there were several meetings from November 2018 to May 2019 to discuss his claims for "matching". According to the Applicant, the UNDP continually refused to re-assign him to the Jerusalem office and

he remained in Ramallah without any work since abolition of the Governance Team. That abolition took effect in September 2018.

16. He put his concerns in writing again on 18 April 2019. This time, the communication did not reiterate the request to return to East Jerusalem but he spoke again to the issue of matching him to a specific post based on the 18 September 2019 correspondence following the restructuring. The Applicant said, “Until today, I am still unaware of the reasons as to why I am not authorized to perform the functions set out in the ToRs for my post”.

17. On 8 May 2019, a response was sent to the Applicant reiterating that his post had not changed. It is by reference to this correspondence that the Applicant, by his request for management evaluation, sought to affix the challenged decision date.

18. On 25 July 2019, a response to the management evaluation letter was sent indicating that the Applicant’s complaint was about the failure to implement the 18 September 2018 no-change-of-function decision. The Applicant was informed that no timely request the management evaluation was made concerning that decision and that later reiterations of a decision did not constitute new decisions. As such he was informed that the request was time-barred and not receivable.

Considerations

19. The Respondent’s submission that the Applicant’s request for management evaluation was not made on time was first set out in the response to the said request by letter dated 25 July 2019. The same submission is made in the reply filed before this Tribunal by the Respondent.

20. The Respondent’s submission on non-receivability of the application is premised on the fact that the Applicant has identified the 18 September 2018 decision as the underlying decision from which the challenge arises. As such, in accordance with staff rule 11.2(c) it was incumbent on the Applicant to challenge, in a timely manner, this underlying decision and any alleged effects it had on him, including the alleged non-implementation since September 2018. A timely challenge had to be

initiated by request for management evaluation within 60 days of 18 September 2018 which would have been by 17 November 2018.

21. The Respondent contends that the Applicant instead waited until 19 June 2019 to request management evaluation. This was too late as it was 214 days after the 18 September 2018 decision. In these circumstances the Respondent cites this Tribunal's consistent position that as this challenge was not receivable by the Management Evaluation Unit pursuant to staff rule 11.2(c) it is also not receivable *ratione materiae* before the Tribunal.¹

22. Further the Respondent argues that the Applicant's reliance on the Organization's subsequent reiterations of the 18 September 2018 no-change decision and his own repeated questioning of it does not support his position that the application is receivable. In *Said* 2018-UNAT-813 at paragraph 15 longstanding jurisprudence was confirmed that mere reiteration of a prior decision does not constitute a new decision.

23. In his application, the Applicant addressed the issue of receivability raised by the Respondent by arguing that he is not challenging the decision made in November 2015 when he was transferred to Ramallah. Instead he is challenging the decision not to implement the outcome of the 2018 restructuring process under which he was matched to a position in Jerusalem. He further challenges the failure to assign him any duties following the September 2018 abolition of the Governance Team in Ramallah. These he contends are totally new decisions an "not a mere reiteration of the 2015 transfer decision".

24. The Tribunal is not persuaded by the Applicant's argument because it is based on two incorrect premises. Firstly, the Applicant appears from his submission to consider that the Respondent's argument on non-receivability is based on an allegation that the Applicant is challenging *the 2015 transfer decision*. This is not so. What the Respondent is contending is that the Applicant is challenging *the underlying 18 September 2018 no-change decision* by reference to reiterations and repeated

¹ *Merlaku* UNDT/2014/055.

questions about it from the Applicant culminating in the final reiteration on 8 May 2019. Thus, the Applicant's assertion that he is not challenging a reiteration of the 2015 decision is of no moment.

25. Secondly, the Applicant's case is based on the premise that the correspondence he sent on 18 April 2019 sought to address a decision other than the one embodied in the 18 September 2019 no-change letter. Thus, the Applicant is saying the 8 May 2019 letter represents a new decision. It was only then, he claims, it was made clear to him that the UNDP had no intention to reassign him his functions or move him back to Jerusalem.

26. This is clearly not correct on the record of the correspondence between the parties. The Respondent repeatedly told the Applicant in writing from July 2018 to May 2019 that there was no change in his functions, and he was to perform the same duties that had always been assigned in Ramallah.

27. The Respondent's many reiterations, up to May 2019, of the position made clear since September 2018 did not give rise to a new challengeable decision so as to bring forward the time within which a request for management evaluation could be made. Even the allegation that no work was given to the Applicant was, in his correspondence, pegged back to the time of the abolition of the Governance Team which was effective September 2018.

28. The request in June 2019 was not timely. The application is therefore not receivable.

Conclusion

11. The Tribunal rejects the application as not receivable.

(Signed)

Judge Eleanor Donaldson-Honeywell

Dated this 29th day of July 2020

Entered in the Register on this 29th day of July 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi