



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2019/092

Judgment No.: UNDT/2020/191

Date: 12 November 2020

Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

FAYEK-REZK

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:

Joseph Grinblat

Counsel for Respondent:

Alan Gutman, ALD/OHR, UN Secretariat

Introduction

1. On 16 November 2019, the Applicant filed an application contesting the Administration's "refusal to move her back, with her post, to her normal function of P-3, French Unit of the Social Media Section".
2. On 18 December 2019, the Respondent filed his reply stating that the application is non-receivable and, in any event, without merit.
3. For the reasons set out below, the application is rejected.

Relevant facts

4. On 14 February 2019, upon her return from leave, the Applicant was informed of her new duties within the Social Media Section, at the Department of Global Communications ("DGC").
5. On 8 July 2019, the Applicant emailed the Deputy Director, News and Media, DGC, requesting to "resume [her] normal duties as P3 in charge of the French Social Media Account as of 15 August 2019 [...]".
6. On 12 July 2019, the Deputy Director informed the Applicant that she would continue in her role of Social Media Research and Projects.

Consideration

7. As the Respondent challenges the receivability of the Application, the Tribunal will address this claim first.
8. The Respondent argues that the application does not identify an administrative decision capable of being appealed under art. 2 of the Tribunal's Statute. He states that the Applicant must establish that a contested decision violates her terms of employment. He states that the Applicant has not met this burden in identifying the

contested administrative decision in her request for management evaluation as “[t]he refusal to name [her] Chief of the French Unit in the Social Media Section, and to name instead [another staff member] on this post [...]”. The Respondent notes that in the Applicant’s application, she describes the contested decision as “the refusal to move her back, with her post, to her normal functions of P-3, French Unit of the Social Media Section” while, at the same time, stating in the application that “there was an attempt to create a temporary replacement P-3 post, instead of moving her back with her P-3 post”.

9. In a submission dated 6 December 2019, the Applicant responds that her appeal concerns only the “refusal to move her back, with her post, to her normal functions of P-3, French Unit of the Social Media Section”.

10. The Appeals Tribunal, as the Respondent rightly points out, places the burden of identifying the contested administrative decision on the Applicant (see, for instance, *Selim* 2015-UNAT-581, para. 23).

11. In the Applicant’s 6 December 2019 response to the Respondent’s challenge on receivability, she unreservedly describes the contested decision as the “refusal to move her back, with her post, to her normal functions of P-3, French Unit of the Social Media Section”. In the application, the Applicant further notes that she was notified of the contested administrative decision on 12 July 2019 by means of an email from the Deputy Director.

12. In light of these submissions, the Tribunal concludes that the Applicant identifies the 12 July 2019 email from the Deputy Director as the contested administrative decision and will therefore review the Respondent’s submissions on receivability with respect to this document.

13. The Respondent argues that the 12 July 2019 email does not notify the Applicant of an administrative decision. He states that the email merely explains the Applicant’s role in DGC and requests the Applicant to incorporate various DGC projects into her own workplan.

14. The Respondent further states that if the 12 July 2019 email were to be understood as a refusal of the Applicant's 8 July 2019 request to "put her in charge of the French Social Media Account", the rejection carries no legal consequences to the Applicant's terms of employment as the Applicant had no right to determine the organization of the work in her office or demand placement in a position that was subject to a competitive selection process. The Respondent recalls that the Organization has the right to organize its own resources.

15. Article 2.1 (a) of the Tribunal's Statute states that the Dispute Tribunal has jurisdiction to pass judgment on:

... an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance ...

16. The evidence in this case shows that on 14 February 2019, the Chief of the Social Media Section, DGC, informed the Applicant of her new tasks and responsibilities, which the Applicant acknowledged. There is no evidence that the Applicant challenged this decision.

17. Later that year, on 8 July 2019, the Applicant wrote to the Deputy Director, News and Media, DGC, requesting to "resume [her] normal duties as P3 in charge of the French Social Media Account as of 15 August 2019, to allow 2 weeks to finalize temp assignments given by [the Chief of the Social Media Section] following [her] return from leave [...]". She states in her email that there is in urgent need for a P-3 level staff in the French Social Media unit because a temporary position at that level has been advertised.

18. On 12 July 2019, the Deputy Director responded by extensively explaining the Applicant's current role, as it had been defined in the 14 February 2019 email from the Chief of the Social Media Section. Therefore, the 12 July 2019 email does not constitute a fresh decision but a mere restatement of the 14 February 2019 email.

19. Therefore, the 12 July 2019 email cannot be claimed to be an administrative decision producing direct legal consequences to the legal order. Accordingly, under the Appeals Tribunal jurisprudence (*Hamad 2012-UNAT-269*), this communication does not constitute an appealable administrative decision under art. 2.1 (a) of the Tribunal's Statute.

20. Moreover, the Applicant failed to contest the assignment of her current functions as notified to her on 14 February 2019. Therefore, the Applicant would be barred from contesting at this point that such assignment was in non-compliance with her contractual rights or conditions of employment.

21. The application is thus not receivable *ratione materiae*.

Conclusion

22. The application is rejected.

(Signed)

Judge Joelle Adda

Dated this 12th day of November 2020

Entered in the Register on this 12th day of November 2020

(Signed)

Nerea Suero Fontecha, Registrar, New York