



Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Nerea Suero Fontecha

ARVIZU TREVINO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alan Gutman, ALD/OHR, UN Secretariat

Introduction

1. On 7 April 2019, the Applicant, the former Chief Executive Officer of the United Nations Joint Staff Pension Fund (“CEO/UNJSPF”), filed an application wherein he describes the contested decision at the relevant paragraph “V. Details of the Contested Decision” as the “decision not to set the record straight and clear [his] name and refusal to provide a safe working environment”.

2. On 28 October 2020, by Order No. 166 (NY/2020), the Tribunal ordered that, upon review of the parties’ submissions, receivability can be dealt with on the submitted papers as a preliminary issue.

3. For the reasons stated below, the Tribunal finds that the application is not receivable *ratione materiae*.

Consideration

Receivability ratione materiae

4. In his application, the Applicant articulates the contested decision as the “decision not to set the record straight and clear [his] name and refusal to provide a safe working environment”. By way of further background, the Applicant submits that by letter of 3 April 2015, the Applicant reported alleged prohibited conduct by several staff members which included “making false claims and accusations against [the Applicant] in public fora”. The Applicant requested that the Organization “take appropriate actions and prevent continued misconduct and stop further dissemination of disinformation, lies and slander utilizing UN email, social media and other forms of mass communication”. The Applicant states that during the course of 2016, the Office of Internal Oversight Services (“OIOS”) conducted two investigations into the allegations against the Applicant and found no substantiation to any of them. The

Applicant complains that OIOS, however, did not issue corresponding public reports which would have helped him clear his reputation. The Applicant states that harassment against him continued for more than two years without any institutional protection from the Administration, and impacted his health. On 14 August 2017, the Applicant was placed on long-term sick leave and on 7 January 2019, the Applicant was terminated from service.

5. In view of the above, it appears that the Applicant seeks to challenge the alleged failure of the Administration to take action in response to comments and correspondence made by several staff representatives in relation to the Applicant's conduct in his role as CEO/UNJSPF.

6. The Respondent submits that the application is not receivable as the Applicant has failed to identify a specific administrative decision taken or omitted that had a direct adverse impact on the Applicant's terms of appointment or contract of employment. The Respondent further submits that the Applicant has failed to submit a timely request for management evaluation. The Tribunal will review these challenges in turn.

a. The Applicant failed to identify a specific administrative decision

7. The Respondent argues that the Applicant has failed to identify any specific administrative decision within the meaning of the Staff Regulations and Rules, the Tribunal's Statute, or the jurisprudence of the Tribunal that has had an adverse impact on the terms and conditions of his appointment. In this regard, the Respondent states that staff representatives have a right to comment on matters of interest to their constituents without the interference of the Secretary-General. The Applicant as CEO/UNJSPF also had a plethora of official communication channels to effectively respond to the comments of the staff representatives.

8. The Tribunal finds that although the Applicant makes several complaints about his treatment and experience as CEO/UNJSPF, he fails to identify an administrative decision capable of being reviewed under the Statute of the Dispute Tribunal.

9. According to art. 2.1(a) of the Dispute Tribunal's Statute, a staff member may appeal "an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment". For an application to be receivable, an applicant must be able to define an appealable administrative decision (see, for instance, *Planas* 2010-UNAT-049, *Haydar* 2018-UNAT-821, *Farzin* 2019-UNAT-917 and *Argyrou* 2019-UNAT-969). The Appeals Tribunal has held that an administrative decision must "have a direct impact on the terms of appointment or contract of employment of the individual staff member".

10. The Tribunal notes that comments and communications of staff representatives do not have a direct impact on the terms of appointment or contract of employment of an individual staff member. Similarly, there is no right in the Applicant's terms of appointment for him to not be subject to comments from staff representatives. There is also no right in the Applicant's terms of appointment for him to compel OIOS or the Administration to issue communications in this regard.

11. The Applicant, like all staff members, however, does have the right to work in a harmonious work environment, free from any discrimination, harassment, and abuse of authority. The proper avenue for the Applicant would be to make an official complaint in regard to the matters raised in the application under ST/SGB/2008/5 on Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority. The outcome of the complaint would then be an administrative decision capable of being reviewed by the Tribunal. The Tribunal notes that the Applicant did indeed make such a complaint under ST/SGB/2008/5, the outcome of which is subject to review under Case. No. UNDT/NY/2020/21.

b. The Applicant has failed to submit a timely request for management evaluation

12. The Respondent submits that the Applicant did not request management evaluation of the contested decisions within 60-days as required under staff rule 11.2(c). The Respondent states that the Applicant appears to contest a decision he describes as the “ill-conceived decision made on 31 March 2015 to allow a Town Hall meeting to take place [...]” The 60-day deadline for requesting management of that alleged decision expired on 30 May 2015. The Respondent contends that the Applicant’s 23 January 2018 request for management evaluation was submitted more than two and half years after that deadline expired.

13. The Applicant, on the other hand, maintains that the contested decisions were implied “as Respondent did not formally advise him in writing or orally that it would not prevent or terminate defamation, verbal assaults, bullying or harassment; or that it would not investigate the reported acts of misconduct”. The Applicant contends that he acted in good faith and was led to believe that the Respondent would take action, and he was reasonable in waiting a period of time before concluding that an implied decision had been taken. Accordingly, the Respondent should be estopped from arguing that there was no administrative decision.

14. The Tribunal notes that in the application, the Applicant lists a number of instances which he identifies as decisions or implied decisions allegedly violating his terms of appointment. These instances range from early 2015 to 10 July 2017. In the case that the decisions or implied decisions were considered to be administrative decisions, the Applicant would have been subject to the 60-day deadline for requesting management evaluation of the decisions. The Applicant’s 23 January 2018 request for management evaluation was submitted more than four months after that deadline expired.

15. In light of the above, the Tribunal finds that the Applicant did not submit a request for management evaluation of the decisions or implied decisions identified in the application within the statutory 60-day deadline. Pursuant to art 8.3 of its Statute, the Dispute Tribunal is not competent to waive the deadline for requesting management evaluation of the contested decisions. The application is therefore non-receivable *ratione materiae*.

Conclusion

16. It is the Judgment of the Tribunal that this application is not receivable. The application is rejected.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 9th day of December 2020

Entered in the Register on this 9th day of December 2020

(Signed)

Nerea Suero Fontecha, Registrar, New York