



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2021/022

Judgment No.: UNDT/2021/128

Date: 5 November 2021

Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

RUSSO-GOT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Kong Leong Toh, UNOPS

Introduction

1. The Applicant, a former staff member of the United Nations Office for Project Services (“UNOPS”), appealed the following alleged decisions: “UNOPS administrative decision to blacklisted [*sic.*] me for any opportunity with the United Nation common system and slander my reputation and professional image in a formal or informal mode (UNOPS shared with others in a formal or informal mode an erroneous [Internal Audit Investigation Group (“IAIG”)] report and/or conclusions); I contest contents, procedures and outcome of the UNOPS [IAIG] investigation [...], and violation of my human rights.”

2. The Respondent replied that the application is not receivable and, in any event, without merit.

3. For the reasons set out below, the Tribunal dismisses the application in its entirety as not receivable.

Relevant facts

4. The Applicant separated from the Organization on 31 January 2019.

5. On 19 January 2021, UNOPS notified the Applicant of the completion of an investigation into allegations of forgery by the Applicant and requested his comments to the report.

6. On 1 February 2021, the Applicant provided the requested comments.

7. On 11 February 2021, the Applicant requested management evaluation of the IAIG report.

Consideration

8. The Appeals Tribunal has most recently defined an appealable administrative decision under sec. 2.1(a) of the Dispute Tribunal's Statute as "a unilateral decision of an administrative nature taken by the administration involving the exercise of a power or the performance of a function in terms of a statutory instrument, which adversely affects the rights of another and produces direct legal consequences" (see *Lloret Alcañiz et al.* 2018-UNAT-840, para. 61).

9. Staff rule 11.2(a) provides that a staff member wishing to contest an administrative decision must first request management evaluation of said decision.

10. With respect to the Applicant's claims of having been "blacklisted", the Respondent contends that the Applicant did not contest this issue as part of his request for management evaluation.

11. The Tribunal notes that in the 11 February 2021 request for management evaluation, the Applicant indeed does not challenge any blacklisting decision.

12. Therefore, this aspect of the application to the Dispute Tribunal is not receivable *ratione materiae*.

13. The Tribunal further notes that in this application, the Applicant refers to several posts for which he applied but was not selected due to the alleged blacklisting. However, no selection decision has been submitted for review either in the 11 February 2021 management evaluation request or in the application. Therefore, the Tribunal will not review any arguments in that respect.

14. With respect to the challenge of the IAIG report, the Tribunal notes that the Appeals Tribunal held that only final administrative decisions are capable of review by this Tribunal whereas "steps [that] are preliminary in nature ... may only be challenged

in the context of an appeal against a final decision of the Administration that has direct legal consequences” (see para. 33 *Nguyen-Kropp & Postica* 2015-UNAT-509).

15. The evidence shows that on 19 January 2021, UNOPS General Counsel requested the Applicant’s comments to the IAIG report and stated that after the deadline for submission of these comments had elapsed, he would “consider ... whether any action should be taken by UNOPS”.

16. The Applicant submitted his response on 1 February 2021 and his request for management evaluation on 11 February 2021. There is no evidence that the Applicant was notified or indeed that he challenged any subsequent decision by UNOPS that is based on the IAIG report.

17. Accordingly, the Tribunal concludes that the Applicant failed to contest a final administrative decision. Instead, he intends to contest the IAIG report itself, which, as clearly stated in the 19 January 2021 communication, merely constitute a preliminary step in the decision process and has, in and by itself, no direct legal consequences for the Applicant.

18. Therefore, this aspect of the application is also not receivable *ratione materiae*.

19. The Tribunal further recalls the well-established jurisprudence of the Appeals Tribunal stating that a former staff member has standing to contest an administrative decision concerning him or her if the facts giving rise to his or her complaint arose, partly arose, or flowed from his or her employment. There must be a sufficient nexus between the former employment and the impugned action (*Shkurtaaj* 2011-UNAT-148).

20. The evidence in this case shows that the IAIG investigation concerned allegations of forgery that the Applicant was alleged to have committed after his separation in the context of a prior litigation before this Tribunal.

21. Therefore, the challenge of the IAIG investigation has no nexus with the Applicant's prior employment with the Organization.

22. Moreover, as the alleged blacklisting is claimed to be the result of the IAIG investigation, it is, by way of consequence, also unrelated to the Applicant's former employment with the Organization.

23. The Tribunal therefore concludes that the application is also not receivable *ratione personae*.

24. As the application is manifestly not receivable, the Tribunal does not find it necessary to hear any further arguments from the Applicant in this respect.

Conclusion

25. In light of the foregoing, the application is rejected as not receivable.

(Signed)

Judge Joelle Adda

Dated this 5th day of November 2021

Entered in the Register on this 5th day of November 2021

(Signed)

Nerea Suero Fontecha, Registrar, New York