



Before: Judge Joelle Adda

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

Clémentine Foizel, ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a former Chief Executive Officer of the United Nations Joint Staff Pension Fund (“UNJSPF”), contests the United Nations Controller’s decision of 17 July 2020 “to deny him a compensation claim under Appendix D of the Staff Regulations and Rules”.

2. The Respondent contends that the application is moot, because the relief sought by the Applicant, namely that the contested decision is rescinded and the case is remanded to the Advisory Board on Compensation Claims (“ABCC”) for consideration under Appendix D, has already been granted.

3. For the reasons set out below, the Tribunal finds that the application is not receivable.

Facts

4. On 17 July 2020, the Secretary of ABCC informed the Applicant that the Controller, at the recommendation of the ABCC, had denied his compensation claim for alleged work-related illness under Appendix D of the Staff Rules.

5. On 6 August 2020, the Applicant filed a request for management evaluation in which he challenged the contested decision of 17 July 2020. In this request, the Applicant sought the Management Evaluation Unit (“MEU”) to “instruct ABCC to reconsider [his] claim and grant [him] compensation” under Appendix D of the Staff Rules. The Applicant further stated that in case MEU did “not direct the ABCC to review [his] claim, [he reserved] the right to make claims for compensation for the reckless and illegal behavior of the ABCC before [the Dispute Tribunal], and the moral injury [he had] further incurred”.

6. On 29 September 2020, the Applicant filed the application in the present case to the Dispute Tribunal by which he challenged the contested decision. As remedies, of relevance to the instant Judgment, the Applicant seeks: (a) that the contested decision is rescinded; (b) that his claim is remanded to the Compensation Claims Unit at the United Nations Office in Geneva or, alternatively, to the ABCC; (c) an award of “moral damages for the stress in the ABCC procedure in the amount of 2 years net base salary based on supporting evidence”; and (d) a referral to the Secretary-General for “possible action against the ABCC Secretary to enforce accountability” under art. 10.8 of the Statute of the Dispute Tribunal.

7. On 30 October 2020, the Respondent filed the reply. Therein, as relevant to the present Judgment, the Respondent submits that the application is “moot and should be dismissed” as not receivable, because the ABCC Secretary had advised the Applicant by email of 27 October 2020 that the Controller had “rescinded the contested decision and remanded the Applicant’s case back to the ABCC for consideration under Appendix D”.

8. By Order No. 90 (NY/2021) dated 8 October 2021, the Tribunal instructed the parties to file their final submissions on receivability by 21 October 2021 (the Respondent) and 4 November 2021 (the Applicant).

Consideration

9. In the Respondent’s final submissions on receivability, he essentially submits that no “live issue” exists in the present case after the case was remanded to the ABCC by the Controller. The Applicant does not deny that the case has been remanded to the ABCC, but rather avers that two matters still need to be addressed by the Tribunal: (a) his claim for moral (non-pecuniary) damages and (b) his request for referral of the matter to the Secretary-General for accountability under art. 10.8 of the Dispute Tribunal’s Statute.

10. The Tribunal notes that for an issue to be receivable pursuant to staff rule 11.2(a), the applicant must first have submitted it for management evaluation unless it concerns “a decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General” or “a decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2”. In line herewith, see also the Appeals Tribunal in, for instance, *Aliko* 2015-UNAT-540 (para. 38), *Gnassou* 2018-UNAT-865 (para. 30) and *Kollie* 2021-UNAT-1138 (para. 75).

11. In the present case, in the Applicant’s request for management evaluation, he explicitly “reserved” the determination of the issue of non-pecuniary damages related to the process before ABCC to the situation where his claim for compensation under Appendix D of the Staff Rules was *not* remanded to the ABCC. As a matter of fact, the Applicant’s Appendix D claim was, however, remanded to the ABCC, and nothing in the case record indicates that the question of non-pecuniary damages was thereafter, as also requested by the Applicant, considered by the MEU.

12. Accordingly, as the Applicant specifically excluded the issue of non-pecuniary damages from his request for management evaluation in the given circumstances, this question is not receivable in the present case before the Dispute Tribunal. As no substantive issues are therefore pending before the Tribunal in the present case, the Tribunal cannot to entertain any of the Applicant’s other requests and motions, including the sought referral for accountability under art. 10.8 of the Dispute Tribunal.

Conclusion

13. The application is rejected as not receivable.

(Signed)

Judge Joelle Adda

Dated this 5th day of January 2022

Entered in the Register on this 5th day of January 2022

(Signed)

Nerea Suero Fontecha, Registrar, New York