



Before: Judge Francesco Buffa
Registry: Nairobi
Registrar: Abena Kwakye-Berko

STEPANOVIC

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:

Brandon Gardner, OSLA

Counsel for the Respondent:

Nicole Wynn, AAS/ALD/OHR, UN Secretariat

Maureen Munyolo, AAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant, who is serving as Chief of Communications, Client Relations and Change Management Unit for the United Nations Regional Service Centre in Entebbe (“RSCE”), complains of the Administration having stripped him of the core functions of the post he encumbered.

Procedural History

2. The Applicant is on a fixed term appointment at the P-4 step 6 level.

3. On 1 September 2021, the Applicant filed an application complaining that the Administration stripped him of the core functions of his post, essentially constructively dismissing him from work and without the Administration utilizing the procedures for reclassification of the post.

4. In particular, the Applicant complains that from 2018 onwards the Chief of the RSCE reorganised the Unit, marginalizing him and removing approximately 95% of his previous functions; notably, in 2018, the Applicant’s authority over the projects of the Client Service Pillar was removed and he was removed from all functions representing RSCE to outside stakeholders and from supervisory functions over other personnel. In 2019, there was removal of all Change and Management functions from the Unit, depriving the Applicant of all the work related to the management of the Client, Vendor and Staff satisfaction Surveys, and in October 2020, there was reassignment to a different Pillar one international staff once supervised by the Applicant. He also adds that he challenges the behaviour of his Chief also for the management of his 2018-2019 ePAS, and for abuse of authority and harassment.

5. On 13 October 2021, the Respondent filed a motion to dismiss the application and for suspension of the deadline to file a reply on the basis that the application is not receivable.

6. The Tribunal issued Order No. 225 (NBI/2021) and, in accordance with arts. 19 and 35 of its Rules of Procedure, considered that it would be appropriate for the fair and expeditious

disposal of the case to grant the Respondent's motion to suspend the deadline for the filing of his substantive reply until receivability had been determined.

7. To that end, the Applicant was afforded the opportunity to file a rejoinder on the issue of receivability, which he did on 25 October 2021.

Facts and Submissions

8. It is the Respondent's case that this application is not receivable because not only has the Applicant come to the Tribunal three years late, he also failed to request timely management evaluation of the decisions he seeks to impugn.

9. The Applicant submits that the Respondent has misconstrued his application. He is not challenging the decision of April 2018 which stripped approximately 30% of his functions; he is rather challenging the cumulative effect of all the decisions taken over the three-year period to strip him of his functions. He stresses that, in the circumstances, over a three-year period, under the guise of restructuring, the Applicant's supervisor stripped him of almost all (95%) his functions, leaving him completely marginalized and with a very small workload. The Applicant also adds that "a constructive dismissal is unlike other types of administrative decisions"; indeed, in seeking to constructively dismiss someone, a "supervisor takes several small decisions to strip the functions of the supervisee, until the cumulative effect of those decisions leaves the concerned staff member with little to nothing to do except to march out the employment door".

10. The Applicant argues that it is unreasonable to expect a staff member to request management evaluation of every single decision that is made, and that in any case, as a passive recipient of these decisions, he could never be sure which decision was the last in the sequence, making it impossible for him to know when he needed to file for management evaluation. Indeed, the stripping of his functions did not cease with the filing of his application; similar decisions were made in September and October 2021.

Considerations

11. Having reviewed the application, the Tribunal considers that the primary issue to be determined is its receivability. The issue of receivability is one which in appropriate cases, such as this one, the Tribunal may determine on a priority basis without awaiting the Respondent's reply (see, among others, *Cherneva* UNDT/2021/050).

12. The Tribunal preliminarily notes that in the case the Applicant complains only of the decisions related to the reorganisation of the RSCE and the redefinition of the Applicant's role, with no reference to the evaluation of the Applicant's performance and to the harassment complaint (which are not the subjects of the present case and are recalled by the Applicant only to give the full picture of the working environment).

13. According to the Applicant, by the general working conditions created by the Chief of RSCE through the mentioned decisions, the Administration sought to constructively dismiss him.

14. The Tribunal recalls that, pursuant to art. 2(1)(a) of the Statute of the Dispute Tribunal, the proceedings before it always requires an administrative decision being challenged (and timely challenged), as it is not possible as a general rule to complain about facts out of a (even implied) administrative decision having been taken.

15. Moreover, pursuant to articles 8(1)(c) and (d) of the Statute, art. 7 of the Rules of Procedure, and staff rule 11.2, a staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, shall, as a first step, submit timely to the Secretary-General in writing a request for a management evaluation of the administrative decision.

16. In sum, there must be a specific, recognizable decision, declaration or ruling, or more than one, made by the Administration (express or implied) that can then be challenged and on which the MEU deadlines can be imposed (*Adnan-Tolon* No. 2019-UNAT-970). The Tribunal

has in general no jurisdiction to waive deadlines for management evaluation or administrative review (*Muratore* 2012-UNAT-191).

17. In this context, the Tribunal is of the view that where a staff member is challenging many different administrative decisions considered as a whole, in relation to their cumulative effect, and not singularly, there is no need to challenge them (by a management evaluation request and then application before the Tribunal) one by one, and timely with reference to the date of each decision. Indeed, by such claim the staff member is not challenging the single decisions but all of them, considered all together in relation to their cumulative impact on the employee's contractual rights (for a similar case, see *Dalgamouni* 2016-UNDT-094).

18. It is therefore sufficient to file a management evaluation request (and then an application) when the cumulative effect produces a relevant impact on the contractual rights of the staff member and therefore with reference only to the last decision(s) which caused the said impact over the relevant threshold.

19. Applying these principles to the case at hand, the Tribunal notes that following the Applicant's allegations he was deprived of the core of his function in 2018 and 2019, that is more than two years before the application, and that the ME was requested by the Applicant (in April 2021) only toward the 2018 decision, and not toward the subsequent administrative decisions.

20. Even considering the reassignment of one international staff once supervised by the Applicant in October 2020 as the last administrative decision impacting the Applicant's contract of employment, and assuming that was the last step of stripping the Applicant's functions (occurred before the Application being lodged), no management evaluation was filed by the Applicant and the application was lodged with the Tribunal only one year later.

Conclusion

21. In light of the foregoing, the application is not receivable.

Case No. UNDT/NBI/2021/077

Judgment No.: UNDT/2022/075

(Signed)

Judge Francesco Buffa

Dated this 19th day of August 2022

Entered in the Register on this 19th day of August 2022

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi