



Before: Judge Francesco Buffa.

Registry: Nairobi

Registrar: Abena Kwakye-Berko

BARRIOS BORJA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Manuel Calzada

Counsel for the Respondent:

Nicole Wynn, AS/ALD/OHR, UN Secretariat

Maureen Munyolo, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant, an Aviation Officer at the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (“MINUSCA”) holding a fixed-term appointment at the P-3 level and based in Bangui, filed an application before the United Nations Dispute Tribunal sitting in Nairobi to impugn the Respondent’s failure to establish a fact-finding panel pursuant to ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority) and claiming damages for the delay of the Administration’s action.

Procedural and Factual background

2. On 15 June 2021, the Applicant formally complained of harassment and abuse of authority by a senior official.

3. No action was taken by the Administration.

4. On 10 January 2022, the Applicant sought a review of the Mission’s failure to establish a fact-finding panel.

5. On 12 February 2022, the Management Evaluation Unit (“MEU”) informed the Applicant that a fact-finding panel “will be established”.

6. On the following months, the Applicant sent repeated reminders and received repeated responses indicating that a fact-finding panel would be established.

7. On 9 January 2023, the Applicant filed the application in para. 1, challenging the Mission’s inaction and claiming for damages for the Administration’s delay and reimbursement of the litigation’s costs. The Application was served on the Respondent.

8. On 7 February 2023, a fact-finding Panel was established.

9. On 8 February 2023, the Respondent filed his motion for summary judgment and asked for the application to be dismissed, being it not receivable *ratione temporis* and moot.

10. On 10 February 2023, the Applicant was informed that a fact-finding panel had been established to investigate his June 2021 complaint.

11. On 12 February 2023, the Applicant responded to the Respondent's motion for summary judgment. The Applicant submitted:

While expressing satisfaction that the Administration has finally implemented what it undertook to do twelve (12) months ago, the Tribunal is respectfully requested to send an appropriate response to the Administration that long delays constitute an abuse of process and authority.

Considerations

12. The establishment of the fact-finding panel, as statutorily required, renders the application moot.

13. Even assuming the Respondent did not act in due time, there is no room - in consideration of the time elapsed from the management evaluation response to the day the application was lodged and, on a different side, from this date to the date the fact-finding panel was established - to award damages and reimbursement of expenses to the Applicant.

Judgment

14. The application is moot.

15. The claim for damages and costs are dismissed.

(Signed)

Judge Francesco Buffa

Dated this 27th day of February 2023

Entered in the Register on this 27th day of February 2023

(Signed)

Eric Muli, Legal Officer, for,
Abena Kwakye-Berko, Registrar, Nairobi