



Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Isaac Endeley

SALON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Yehuda Goor, AS/ALD/OHR, UN Secretariat

Introduction

1. On 28 June 2022, the Applicant, a former staff member of the Office of Internal Oversight Services (“OIOS”) who separated from service on 30 June 2022, filed an application with the Tribunal contesting the “long-term harassment, abuse of authority, humiliation, and retaliation suffered during the last four years of [his] career”.
2. On 12 July 2022, the Respondent filed a motion for summary judgment arguing that the application is not receivable as a matter of law. He also requested, *inter alia*, to suspend the Respondent’s deadline to file a reply pending the Tribunal’s determination of his motion.
3. On 17 July 2022, the Applicant filed a submission requesting the Tribunal to dismiss the Respondent’s motion, to deny the Respondent’s request to suspend the deadline to file a reply on the merits and to consider his case receivable.
4. On 15 March 2023, the present case was assigned to the undersigned Judge and was included in his docket for his current deployment.
5. By Order No. 030 (NY/2023) of 6 April 2023, the Tribunal granted the Respondent’s request to suspend the deadline to file a reply pending a determination of his motion for summary judgment.

Consideration

Motion for summary judgment

6. In the present case, the Respondent moved for summary judgment on the grounds that the application is not receivable as a matter of law.
7. Article 9 of the Tribunal’s Rules of Procedure provides that “[a] party may move for summary judgement when there is no dispute as to the material facts of the case and a party is entitled to judgement as a matter of law.”

8. Having considered the parties' submissions on record, the Tribunal deems it appropriate, in accordance with art. 9 of its Rules of Procedure, to grant the Respondent's motion and to dispose of the present matter by way of summary judgment, which has been accepted as an appropriate means to deal with issues of receivability (see *Chahrour* 2014-UNAT-406; *Gehr* 2013-UNAT-313; *Cherneva* UNDT/2018/081; *Cherneva* UNDT/2020/074 and *Cherneva* UNDT/2021/003).

Receivability

9. The issue at stake in the present case is whether the application is receivable, as receivability is a condition *sine qua non* for judicial review by the Tribunal.

10. The Respondent submits that the application is not receivable *ratione materiae* on two grounds. First, he claims that the Applicant has not sought management evaluation of the alleged decisions. Second, he argues that the Applicant does not contest any administrative decision.

11. To determine the receivability of the application, the Tribunal considers it appropriate to first identify the contested administrative decisions.

The contested decisions

12. In his application, the Applicant contests the "long-term harassment, abuse of authority, humiliation, and retaliation suffered during the last four years of [his] career". He claims that "multiple events of prohibited conduct occurred during the period [of] 2018-2022".

13. The Tribunal recalls that it does not have jurisdiction to hear and determine all matters in respect of which a staff member may feel aggrieved. The Tribunal must ensure that there is an administrative decision that is alleged to be in non-compliance with the staff member's terms of appointment or his or her contract of employment, as provided for in art. 2.1(a) of the Tribunal's Statute. Such decision must be unilaterally taken by the Administration, be directed to the staff member, and have direct legal consequences for the staff member (see *Lloret*

Alcaniz et al. 2018-UNAT-840, para. 61 and *Adnan-Tolon*, UNDT/2019/056 para. 7).

14. In relation to the Applicant's claims that several events of prohibited conduct occurred between 2018 and 2022, the Tribunal recalls that the former Secretary-General's Bulletin ST/SGB/2008/5 on the "Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority" sets out a separate process for an investigation into allegations of harassment and abuse of authority. Similarly, the current Secretary-General's Bulletin ST/SGB/2019/8 entitled "Addressing discrimination, harassment, including sexual harassment, and abuse of authority" provides for a separate process to be followed for the handling of formal reports of prohibited conduct including the possibility to conduct an investigation, and the Dispute Tribunal does not have jurisdiction to conduct such an investigation.

15. The Appeals Tribunal held in *Adnan-Tolon* 2019-UNAT-970 that:

Before a staff member may file a harassment and abuse of authority claim with the Dispute Tribunal, he or she must make efforts to pursue internal remedies set out in the Bulletin which provides for an informal and formal process for addressing these allegations.

16. As stated by the Appeals Tribunal, if a staff member has been subjected to acts of harassment and abuse of authority over several years, there is "a contractual entitlement to request that his allegations are addressed. That entitlement, and the procedural path he is obliged to take to bring his complaint to his employer, is set out in the Secretary-General's Bulletin ST/SGB/2008/5" (see *Luvai* 2014-UNAT-417, para. 62).

17. The Applicant did not follow the procedural path under the Bulletins. There is no evidence that he ever filed a complaint of harassment and abuse of authority against his supervisors in the framework of ST/SGB/2008/5 or ST/SGB/2019/8. He asserts that the "administrative decisions were implicit as per the nature of harassment and abuse of authority" but failed to demonstrate that he pursued the internal remedies set out in the Bulletins.

18. Having said the above, the Tribunal further notes that the Applicant failed to request management evaluation of the alleged contested administrative decisions as required by staff rule 11.2(c). In this regard, the Tribunal recalls that it may only review decisions that have been the subject of a timely request for management evaluation (see *Khan* 2022-UNAT-1284, para. 52), which was not the case here.

19. Under such circumstances, the Tribunal finds that the application is not receivable *ratione materiae*.

Conclusion

20. In view of the foregoing, the Tribunal DECIDES to reject the application as not receivable.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 18th day of May 2023

Entered in the Register on this 18th day of May 2023

(Signed)

Isaac Endeley, Registrar, New York