



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2023/063

Judgment No.: UNDT/2023/089

Date: 28 August 2023

Original: English

Before: Judge Solomon Areda Waktolla

Registry: Nairobi

Registrar: Eric Muli, Officer-in-Charge

KIBANGA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:

Donald W. Kaniaru

Counsel for the Respondent:

Nisha S. Valabhji, UNON

Introduction and Procedural History

1. The Applicant serves as a Supply Assistant at the G-4 level with the Division of Conference Services at the United Nations Office at Nairobi (“UNON”). He holds a fixed term appointment.

2. In his application filed on 16 August 2023, he challenges the Respondent’s decision to terminate his contract on grounds of abolishment of post effective 30 November 2023. He seeks: suspension of action pending the hearing and determination of this application; reinstatement for the remainder of his current contract term with a review for further extensions to retirement age, and in the alternative, payment, and compensation for the remaining terms of his contract and “legitimately expected extension(s) to retirement age”; and legal costs.

3. Pursuant to the Tribunal’s directions the Respondent’s filed his reply on 22 August 2023, in which reply he sought leave to file a consolidated “reply to the Applications”, given that the Applicant and two other applicants are contesting the same administrative decision and that they advance similar arguments and seek similar or identical remedies. The Respondent moved the Tribunal to dismiss all three applications (UNDT/NBI/2023/63, 64 and 65) on grounds of receivability.

Deliberations

4. 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 with or without the Respondent’s reply.¹

5. The Respondent’s submissions on the jurisdiction of the Tribunal to consider this application is premised on the fact that the Applicant has not sought a management

¹ *Morales* UNDT/2019/158, *Cherneva* UNDT/2021/101.

evaluation request of the impugned decision.

6. Staff rules 11.2(a) and (c) provide that:

(a). Staff members wishing to formally contest an administrative decision alleging non-compliance with their contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

(c) A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested. The deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

7. Article 8(1)(c) of the Statute of the United Nations Dispute Tribunal provides that an application (before the Dispute Tribunal) shall be receivable *if* an applicant has previously submitted the contested administrative decision for management evaluation, where required.

8. In accordance with staff rules 11.2(a) and (c) and art.8(1)(c) of the Statute it was, therefore, incumbent on the Applicant to challenge, in a timely manner, this underlying decision and any alleged effects it had on him. A timely challenge had to be initiated by request for management evaluation within 60 days of the date of the impugned decision.

9. In *Gehr* 2013-UNAT-293, the Appeals Tribunal held

The overarching intention of Article 8(1)(c) is that management evaluation is a mandatory first step, prior to invoking the jurisdiction of the Dispute Tribunal to receive an application under its competency.

10. The Applicant in this case has not requested a review of the impugned decision by management evaluation, thus depriving the Tribunal of the jurisdiction to consider this matter any further.

JUDGMENT

11. The application is dismissed as not receivable.

(Signed)

Solomon Areda Waktolla
Dated this 28th day of August 2023

Entered in the Register on this 28th day of August 2023

(Signed)

Eric Muli, Officer-in-Charge, Nairobi