



Before: Judge Solomon Areda Waktolla
Registry: Nairobi
Registrar: René M. Vargas M., Officer-in-Charge

SHABAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:
Self-represented

Counsel for Respondent:
AAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant serves as an Information Systems Assistant at the United Nations Truce Supervision Organisation (“UNTSO”), on a fixed-term appointment and is based in Jerusalem.

2. On 20 July 2024, he filed an application with the United Nations Dispute Tribunal sitting in Nairobi to challenge his non-selection to the GS-6 post of Information Technology Assistant (Job Opening No. 226204), which he had applied to.

Consideration

3. Having reviewed the application, the Tribunal considers that the primary issue to be determined is its receivability. The issue of receivability is one that in appropriate cases, such as this one, the Tribunal may determine on a priority basis with or without the Respondent’s reply.¹

4. In this case, the application indicated that the Applicant had requested management evaluation on 13 June 2024. The Registry wrote to the Applicant for a copy of his management evaluation request. The Applicant responded with a copy of the email chain between him and the hiring manager for the position, which he understood to be the management evaluation request.

5. Staff rule 11.2 on management evaluation provides in its pertinent part 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.

...

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

(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. This 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.

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

7. In accordance with staff rules 11.2(a) and (c), and art. 8(1)(c) of the Tribunal's Statute it was, therefore, incumbent on the Applicant to seek review of the decision he wishes to impugn by the Management Advice and Evaluation Section.

8. 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.

9. The Applicant in this case was given the opportunity to complete his application with the mandatory prerequisite for the filing of an application before the UNDT. The Applicant appears to have misunderstood what constitutes a "management evaluation request". He assumed that querying the process with the hiring manager, and later, the Mission's Chief of Staff, constitutes "management evaluation" for the purposes of proceedings before the UNDT. It does not.

10. In the circumstances, the Tribunal finds that the Applicant has not fulfilled the mandatory prerequisite of having the impugned decision reviewed by management evaluation, thus depriving the Tribunal of the jurisdiction to consider this matter any further.

11. The application is therefore not receivable *ratione materiae*.

Conclusion

12. In view of the foregoing, the application is DISMISSED as not receivable.

(Signed)

Judge Solomon Areda Waktolla

Dated this 14th day of August 2024

Entered in the Register on this 14th day of August 2024

(Signed)

René M. Vargas M., Officer-in-Charge, Nairobi