



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2024/017
Judgment No.: UNDT/2025/016
Date: 10 April 2025
Original: English

Before: Judge Solomon Areda Waktolla

Registry: New York

Registrar: Isaac Endeley

SALON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Tamal Mandal, AS/ALD/OHR/UN Secretariat

Steven Dietrich, DAS/ALD/OHR/UN Secretariat

Introduction

1. On 1 April 2024, the Applicant, a former staff member in the Internal Audit Division (“IAD”) of the Office of Internal Oversight Services (“OIOS”), filed an application challenging the 23 January 2024 decision of the Assistant Secretary-General for Human Resources (“ASG/OHR”), Department of Management Strategy, Policy and Compliance (“DMSPC”) not to initiate an investigation and close the Applicant’s complaint alleging “[l]ong-term harassment, abuse of authority, humiliation, and retaliation suffered during the last four years of [his] career [2018 to 2022]” (“the contested decision”).

Factual and procedural background

2. On 27 June 2022, the Applicant filed a complaint alleging possible prohibited conduct addressed to the ASG/OHR and the Chef de Cabinet against: (a) the Under-Secretary-General (“USG”)/OIOS; (b) the Director, IAD/OIOS and (c) the Deputy Director, IAD/OIOS under Secretary-General’s bulletin ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority) and administrative instruction ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process).

3. On 28 June 2022, the Applicant filed an application before the Dispute Tribunal contesting the “long-term harassment, abuse of authority, humiliation, and retaliation suffered during the last four years of [his] career”. That case was registered under Case No. UNDT/NY/2022/035.

4. On 30 June 2022, the Applicant separated from the Organization having reached the mandatory retirement age.

5. On 12 July 2022, the Respondent filed a motion for summary judgment in Case No. UNDT/NY/2022/035 arguing that the application was not receivable because the Applicant failed to request management evaluation and identify a reviewable administrative decision.

6. On 18 May 2023, the Dispute Tribunal issued a summary judgment, *Salon* UNDT/2023/029, rejecting the application in Case No. UNDT/NY/2022/035 as not receivable *ratione materiae* because the Applicant failed to: (a) “demonstrate that he pursued the internal remedies set out in the Bulletins”; and (b) “request management evaluation of the alleged contested administrative decisions as required by staff rule 11.2”.

7. On 14 June 2023, the Applicant appealed the Dispute Tribunal’s judgment in *Salon* UNDT/2023/029 to the Appeals Tribunal. The case was registered as Case No. 2023-1814.

8. On 23 January 2024, the ASG/OHR informed the Applicant that the preliminary assessment of his complaint had been completed in accordance with sec. 5.5 of ST/AI/2017/1 and it was determined that there was insufficient evidence to support his allegations. The ASG/OHR also informed the Applicant that it had been decided not to initiate an investigation into his complaint and to close the matter.

9. On 22 March 2024, the Appeals Tribunal pronounced in *Salon* 2024-UNAT-1432 that it had dismissed the Applicant’s appeal and affirmed the Dispute Tribunal’s judgement in *Salon* UNDT/2023/029.

10. On 1 April 2024, the Applicant filed the present case.

11. On 11 April 2024 the Respondent filed a motion requesting the Tribunal to dismiss the application as not receivable.

12. On 12 April 2024, the Applicant filed a response opposing the Respondent’s motion on receivability.

13. By Order No. 047 (NY/2024) dated 19 April 2024, the Tribunal granted the Respondent’s motion to have the receivability of the application decided as a preliminary issue. The Tribunal informed the parties that unless otherwise ordered, after the case is assigned to a Judge, the Tribunal may decide on the issue of receivability based on the papers before it.

14. The case was assigned to the undersigned Judge on 23 December 2024.

Consideration

Receivability

15. The issue in the present case is whether the application is receivable.

16. It is the established jurisprudence of the Appeals Tribunal that the Dispute Tribunal has the authority to satisfy itself that an application is receivable under art. 8 of its Statute (see, for instance, *O'Neill* 2011-UNAT-182, para. 31, as affirmed in AAX 2024-UNAT-1504, para. 47). The Appeals Tribunal has also held that the Dispute Tribunal may consider the receivability of an application as a preliminary matter before reviewing the merits of the case (see, for instance, *Pellet* 2010-UNAT-073).

17. The Respondent submits that the application is not receivable *ratione materiae* as the Applicant did not request management evaluation. The Respondent also asserts that the contested decision is not a reviewable administrative decision under *O'Brien*.

18. The Applicant states that his case is receivable. He submits that he “presented a complaint case of harassment and abuse of authority to [his] former OIOS/USG” and that he “formally requested management evaluation/ case of complaint of harassment and abuse of authority to DMSPC/ ASG/OHR [...] on 27 June 2022”. The Applicant further states that the jurisprudence of *O'Brien* is not applicable in his case, because he is a staff member of OIOS “which is in charge of investigations in cases of harassment and abuse of authority according to ST/SGB/2019/8, ST/AI2017/1 and related law, [but] for cases of harassment and abuse of authority involving OIOS management, OIOS is not in charge of assessments and investigations, due to the obvious lack of independence, and then in ST/AI/2017/1 the ‘responsible official’ in charge of doing an independent investigation is [the ASG/OHR]”.

Did the Applicant submit a request for a management evaluation?

19. Staff rule 11.2(a) requires a staff member wishing to formally contest an administrative decision to, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

20. Staff rule 11.2(c) states that 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.

21. Article 8.1(c) of the Dispute Tribunal's Statute provides that an application shall be receivable if an applicant has previously submitted the requested administrative decision for management evaluation, where required. However, pursuant to art. 8.3 of its Statute, the Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.

22. The Tribunal does not have power to waive the deadlines for the filing of requests for management evaluation or to make any exception to it (see, for instance, *Costa* 2010-UNAT-036; *Christensen*). A determination on receivability must be made without regard to the merits of the case (see, for instance, the Appeals Tribunal in *Gehr* 2013-UNAT-313; *Christensen*; *Cooke* 2013-UNAT-380; *Lee* 2014-UNAT-481).

23. Upon review of the record, the Tribunal finds that the Applicant did not submit a request for management evaluation.

24. On 27 June 2022, the Applicant submitted a report of possible prohibited conduct against the USG/OIOS to the ASG/OHR under ST/SGB/2019/8 and ST/AI/2017/1. The Applicant's report was entitled "Complaint of harassment and abuse of authority." Contrary to the Applicant's assertions, this 27 June 2022 correspondence cannot be characterized as a request for management evaluation for the following reasons.

25. First, ST/AI/2017/1 sets forth the process for reporting information about suspected unsatisfactory conduct. ST/AI/2017/1 does not concern management

evaluation. Second, the Management Advice and Evaluation Section (“MAES”) (formerly Management Evaluation Unit (“MEU”)) in DMSPC is the office which receives management evaluation requests from staff members. The record indicates that the Applicant did not submit a request for request for management evaluation to MAES as required under staff rule 11.2.

26. The Respondent correctly points out that, even if for the sake of argument, it is accepted that the Applicant’s 27 June 2022 correspondence was a request for management evaluation under staff rule 11.2, the application would remain not receivable. The 27 June 2022 correspondence cannot be both a request for management evaluation and a complaint of prohibited conduct. Logically, the Applicant would have had to have filed a complaint of prohibited conduct as foreseen under ST/SGB/2019/8 and ST/AI/2017/1 and obtained an outcome from that complaint of prohibited conduct before requesting management evaluation, which he did not do prior to 27 June 2022. In this scenario, as the Applicant directly contests alleged prohibited conduct without first pursuing internal remedies, the application is also not receivable *ratione materiae*.

Is the contested decision a reviewable administrative decision?

27. The Respondent also asserts that the contested decision is not a reviewable administrative decision under *O’Brien* 2023-UNAT-1313 because it did not produce a direct effect on the Applicant, did not have external legal effect, and did not directly or adversely impact the Applicant’s contractual employment rights (para. 24).

28. The Tribunal notes that in *O’Brien*, the Appeals Tribunal held that the Administration’s decision not to investigate allegations of misconduct is not a reviewable administrative decision because it does not produce direct legal consequences on a staff member’s rights under a contract of employment (para. 32).

29. The Applicant states that the jurisprudence of *O’Brien* is not applicable in his case, because he was a staff member of OIOS at the relevant time “which is in charge of investigations in cases of harassment and abuse of authority according to ST/SGB/2019/8, ST/AI2017/1 and related law, [but] for cases of harassment and

abuse of authority involving OIOS management, OIOS is not in charge of assessments and investigations, due to the obvious lack of independence, and then in ST/AI/2017/1 the “responsible official” in charge of doing an independent investigation is DMSPC/ASG”.

30. The Tribunal finds no merit in the Applicant’s argument. The Appeals Tribunal’s findings in *O’Brien* are directly applicable to the instant case. Mr. O’Brien complained to the Office of Audit and Investigation (“OAI”) that he had been the subject of malicious reporting and demanded an independent investigation. The Appeals Tribunal found in *O’Brien* that “[i]n essence, Mr. O’Brien seeks review of an investigation that produced an intermediate recommendation (without direct effect) that was not implemented (hence without external, legal effect) and thus did not directly and adversely impact his contractual employment rights (para. 29).

31. In the present case, the Applicant, like Mr. O’Brien, alleged harassment, abuse of authority, humiliation, and retaliation and demanded an independent investigation. As in *O’Brien*, a preliminary assessment of the Applicant’s allegations found that there was insufficient evidence to warrant an investigation into the allegations of possible prohibited conduct. This was communicated to the Applicant by letter dated 23 January 2024 from the ASG/OHR.

32. The Tribunal further notes that it is bound to follow the jurisprudence of the Appeals Tribunal under the legal doctrine of *stare decisis* (see, for instance, *Igbinedion* 2014-UNAT-410, paras. 23-25) and will therefore also abide by its judgment in *O’Brien*. The application should be dismissed as not receivable *ratione materiae*, since the contested decision had no direct effect on the Applicant, no external legal effect, nor any adverse impact on the Applicant’s contractual employment rights.

Conclusion

33. The application is rejected as not receivable.

(Signed)

Judge Solomon Areda Waktolla

Dated this 10th day of April 2025

Entered in the Register on this 10th day of April 2025

(Signed)

Isaac Endeley, Registrar, New York