



Before: Judge Margaret Tibulya

Registry: Geneva

Registrar: René M. Vargas M.

ČALDAREVIĆ

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON RESPONDENT'S MOTION TO HAVE
RECEIVABILITY DETERMINED AS A
PRELIMINARY MATTER**

Counsel for Applicant:

Ana Giulia Stella, OSLA
Mario Hainboeck, OSLA

Counsel for Respondent:

Alister Cumming, UNICEF

Introduction

1. By application filed on 5 April 2023, the Applicant, a former staff member of the United Nations Children’s Fund (“UNICEF”), contests decision to separate him from service for abandonment of post.
2. On 19 April 2023, the Respondent filed a motion with the Tribunal to have receivability determined as a preliminary matter.
3. On 20 April 2023, the Applicant requested permission to file a response to the Respondent’s motion by 28 April 2023.
4. On 21 April 2023, the Tribunal granted the Applicant’s request and ordered the Applicant to file a response to the motion to have receivability determined as a preliminary matter by 28 April 2023.
5. On the same day, the Tribunal suspended the deadline for the Respondent’s reply pending the determination of the above-mentioned motion.
6. On 28 April 2023, the Applicant filed his response to the above-mentioned Respondent’s motion.

Consideration

7. In support of his motion, the Respondent submits that the application is not receivable *ratione temporis* because it was filed after the deadline in staff rule 10.4(a). He specifically argues that the Applicant did not have a right to refile his request for management evaluation and that the Applicant’s second management evaluation request did not restart the timelines for any application.
8. The Applicant requests the Tribunal to reject the Respondent’s motion of 19 April 2023. To support his request, he argues that the Respondent’s motion attempts to dismiss the application on invalid procedural grounds, thereby depriving his right to have this case heard on its merits.

9. The Tribunal recalls that art. 19 of its Rules of Procedure provides that it can “issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties”. In this connection, the Tribunal notes that:

[a]lthough no right to partially respond is granted by the Statute or the Rules of Procedure of the Dispute Tribunal, the Tribunal may decide in certain cases to permit the Respondent to file a reply addressing only the issue of receivability, provided that the Tribunal is satisfied that it would be appropriate for the fair and expeditious disposal of the case and to do justice to the parties (see Di Giacomo Order No. 335 (NY/2010); see also Balakrishnan Order No. 97 (GVA/2011) and Mafessanti Order No. 169 (GVA/2015)).

10. Having reviewed the parties’ submissions, the Tribunal is of the view that the answer to the crucial question of whether the application is receivable *ratione temporis* in the present case is not a straightforward one. Motions for leave to have receivability considered as a preliminary matter should be granted only when the receivability of the application is a clear-cut issue (see, e.g., *Dragnea* Order No. 61 (NY/2022); *Balakrishnan* Order No. 97 (GVA/2011)), which is not the case here.

11. The above notwithstanding, the present Order is without prejudice to the Tribunal’s later determination on the issues of receivability and merits of the Applicant’s claims.

Conclusion

12. In view of the foregoing, it is ORDERED THAT:

- a. The Respondent’s motion to have receivability determined as a preliminary matter is rejected; and

Case No. UNDT/GVA/2023/017

Order No. 43 (GVA/2023)

b. The Respondent shall file his full reply to the application by **Wednesday, 24 May 2023.**

(Signed)

Judge Margaret Tibulya

Dated this 2nd day of May 2023

Entered in the Register on this 2nd day of May 2023

(Signed)

René M. Vargas M., Registrar, Geneva