



Before: Duty Judge

Registry: Nairobi

Registrar: René M. Vargas M., Officer-in-Charge

NGUETO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON CASE MANAGEMENT

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Charlotte Servant-L'Heureux, UNHCR
Francisco Navarro, UNHCR

Introduction

1. The Applicant served as a Senior Protection Officer with the Office of the United Nations High Commissioner for Refugees (“UNHCR”). He held a fixed-term appointment at the P-4 level and was based in Aru, Democratic Republic of the Congo.
2. On 16 October 2023, the Applicant filed an application with the United Nations Dispute Tribunal sitting in Nairobi to challenge the Respondent’s 17 August 2023 decision to enter his name into the ClearCheck database.¹
3. On 25 October 2023, the Respondent moved the Tribunal to summarily dismiss the application on grounds that the Applicant had not filed a request for management evaluation on the impugned decision.

Facts

4. On 14 December 2021, the Inspector General’s Office (“IGO”), UNHCR, received a complaint that the Applicant had sexually harassed a female colleague (“the Complainant”). The IGO opened an investigation, which was completed on 5 July 2022.
5. On 25 July 2022, the Director of the Division of Human Resources, UNHCR, issued formal allegations of misconduct against the Applicant, and charged him with sexual harassment by making unwelcome sexual advances and sending unwelcome messages of a sexual nature to the Complainant.
6. On 1 August 2022, the Applicant responded to the allegations of misconduct.
7. On 8 December 2022, upon expiry of his fixed-term appointment, the Applicant separated from the Organization.

¹ ClearCheck is a UN-wide screening database. It was established in 2018 and is managed by the Office of Human Resources Management.

8. The disciplinary process against the Applicant did not progress beyond the Applicant's response to the allegations and charge.

9. By letter dated 17 August 2023, the Applicant was informed *inter alia* that his name would be included in the ClearCheck database.

Consideration

10. In support of his motion for summary judgment, the Respondent argues that this matter should be dismissed because the Applicant has not sought management evaluation as required by staff rule 11.2 and article 8 of the Statute of the Dispute Tribunal.

11. He also contends that the Applicant's separation from the service of the Organization made it impossible for the disciplinary process against him to be concluded. There is, therefore, no disciplinary decision to challenge and any subsequent administrative decision being challenged before the Tribunal must be subject to management evaluation.

12. The Tribunal has carefully considered the Respondent's submissions and finds that the Applicant should be afforded the opportunity to respond to the Respondent's contentions and arguments on receivability. In other words, the Tribunal does not consider this matter suitable for summary judgment until the Applicant is provided an opportunity to respond to the motion.

13. Given the nature of the allegations against the Applicant and the severity of the impugned decision, the Tribunal strongly advises the Applicant to seek the assistance of counsel in this matter. To hasten the process, the Tribunal will refer the matter to the Office of Staff Legal Assistance for its consideration.

Conclusion

14. For the purposes of fair and expeditious management of this case, the Tribunal makes the following ORDERS:

- a. The Applicant is directed to file his submission in response to the Respondent's position on receivability by **Thursday, 29 February 2024**;
- b. The Registry will serve a copy of this Order on the Office of Staff Legal Assistance; and
- c. The ruling on the Respondent's motion for summary judgment is deferred pending consideration of any response thereto.

(Signed)

Judge Sean Wallace (Duty Judge)

Dated this 30th day of January 2024

Entered in the Register on this 30th day of January 2024

(Signed)

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