



Before: Judge Francis Belle

Registry: New York

Registrar: Morten Michelsen, Officer-in-Charge

DRAGNEA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for Applicant:

Michael Horn, Archer & Greiner, PC

Counsel for Respondent:

Yehuda Goor, AAS/ALD/OHR, UN Secretariat

Introduction

1. By application filed on 17 November 2021, the Applicant, a staff member of the United Nations Department for Safety and Security (“UNDSS”), contests the decisions to:

- a. Issue her a notice of reprimand (“Notice”);
- b. Place the Notice in her file;
- c. Place the Applicant in a performance improvement plan (“PIP”); and
- d. The outcome of the Management Evaluation Unit’s (“MEU”) review of the above.

2. On 18 November 2021, the application was served on the Respondent, who was instructed to file his reply by 20 December 2021.

3. On 26 November 2021, the Respondent filed a motion requesting the Tribunal to determine receivability as a preliminary matter and suspend the deadline for the Respondent’s reply.

4. By email dated 29 November 2021, the Tribunal granted the Respondent’s request to suspend the deadline for his reply.

5. On 2 December 2021, the Applicant filed her opposition to the Respondent’s motion to have receivability determined as a preliminary matter.

6. On 10 December 2021, the Applicant filed her supplemental opposition to the Respondent’s motion.

7. On 1 July 2022, the present case was assigned to the undersigned Judge.

Consideration

8. In support of his motion, the Respondent submits that the application is not receivable *ratione materiae* because the Applicant does not contest a reviewable administrative decision. Specifically, he argues that the Notice is “a preparatory

step in the evaluation of the Applicant’s performance” and does not impose any disciplinary or administrative measures on the Applicant; that the PIP is merely a preliminary step instituted to address a staff member’s shortcomings during a performance cycle; and that the MEU’s response is not an appealable decision.

9. The Applicant contends that whether a decision is of an administrative nature or not must be determined on a case-by-case basis and thus the Tribunal should decide this issue after it hears the entire case. Moreover, he argues that the nature of the Notice and the PIP and their legal consequences render the application receivable.

10. At the outset, 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 recalls 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)).

11. The Tribunal notes that it is well-settled law that “the Administration’s response to a request for management evaluation is not a reviewable decision” (see *Nwuke* 2016-UNAT-697, para. 20-23). This means that the Tribunal does not have jurisdiction to consider appeals against the outcome of a review of the administrative decision by MEU. Accordingly, this aspect of the application is manifestly not receivable.

12. However, having reviewed the parties’ submissions, the Tribunal is of the view that other aspects of the application are not clear-cut issues. 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., *Balakrishnan* Order No. 97 (GVA/2011)), which is not the case here.

13. The present Order is without prejudice to the Tribunal's determination of the issues of receivability and merits of the Applicant's claims.

IT IS ORDERED THAT

14. The Respondent's motion to have receivability determined as a preliminary matter is rejected except for the application concerning the outcome of the MEU's review of the contested decisions listed in para. 1. a., b., and c. above.

15. The Respondent shall file his full reply to the application by **Monday, 15 August 2022.**

(Signed)

Judge Francis Belle

Dated this 14th day of July 2022