



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2016/050

Judgment No.: UNDT/2016/103

Date: 28 July 2016

Registry: Nairobi

Registrar: Abena Kwakyere

FAYEK

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Joseph Grinblat

Counsel for the Respondent:
ALS/OHRM

Introduction

1. On 10 July 2010, the Applicant, a staff member of the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA), filed an application with the UN Tribunal (UNDT) in Geneva.

6. By letter dated 11 April 2016, the Secretary General for Communications and Public Information informed the Applicant of the conclusion of the investigation and the actions to be taken by the Office of Human Resources Management (OHRM) in relation to the allegations. The case in relation to the Applicant's allegations was closed.

7. On 10 July 2016, the Applicant filed an application with the Tribunal.

Preliminary matters

8. Pursuant to article 8.4 of the UNDT Rules of Procedure, the Registrar "shall transmit a copy of the application to the respondent and to any other party a judge considers appropriate" after ascertaining that the application is in compliance with articles 8.1 to 8.3 of the Rules of Procedure. The issue of receivability, however:

[...] is a matter of law, which may be adjudicated even without serving the application to the Respondent for reply and even if it was not raised by the parties. (UNDT/2013/14)¹

9. This Tribunal endorses the views set out in UNDT/2013/14. After a review of the application and its supporting documents, the Tribunal is of the opinion that it is appropriate to decide on the application without first transmitting a copy of the application to the Respondent for a reply.

Considerations

10. The Tribunal observes that the Applicant indicated in her application that she did not submit a request for management evaluation of the contested decision, which raises the issue of the receivability of the application.

11. Pursuant to article 81(c) of the UNDT Statute, the jurisdiction of the Tribunal can only be exercised if the contested administrative decision has previously been submitted for management evaluation where required.

¹ See also *Christensen* 2013/JNAT -335 and *Mostomarova* UNDT/2014/027

12. The requirement of management evaluation set out in staff rule 11.2 which provides that:

(a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 *(a)*, as a first step, submit to the Secretary-General in writing a request for management evaluation of the administrative decision (emphasis added)

By way of exception:

(b) A staff member wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General, or of a decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 11.2, the completion of a disciplinary process is not required to request a management evaluation.

13. Management evaluation is a mandatory administrative review to be undertaken prior to the submission of an application to the Tribunal and it is not open to the Tribunal to waive this requirement or make any exceptions. *(see UNAT -072 Trajanovska 2010 UNAT -074 Ajdini 2011 UNAT -103)*

14. It is clear from the application and its supporting documents that the Applicant contests the closure of her case concerning allegations of prohibited conduct without granting her compensation for the allegedly suffered, as communicated to her by letter dated 11 April 2016. This decision obviously does not fall under any of the two categories of decisions for which a management evaluation

15. As a consequence, the absence of a management evaluation report, the Tribunal