



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2016/027

Judgment No.: UNDT/2017/030

Date: 26 April 2017

Original: English

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**Before:** Judge Ebrahim-Carstens

**Registry:** New York

## **Introduction**

1. By application dated 17 June 2016, the Applicant, an Investigator at the P-3

and unaccountability and lack of integrity among OIOS senior management by failing to take appropriate action.

2. Essentially, the Applicant alleges that his rights to request management evaluation, and to a full, fair and timely consideration of such requests in order to correct unlawful decisions in an efficient and timely manner, have been infringed by the conduct and/or inaction of the MEU and the Administration, in its multiple failures and omissions to take appropriate action to enforce compliance and accountability. As relief, the Applicant seeks, *inter alia*: correction of the ir9(of)3150 0 1 4.46 Tm[(:)]c

4. By Order No. 180 (NY/2016) dated 25 July 2016, the Tribunal ordered the Applicant to file a submission addressing the issues of receivability raised in the Respondent's reply by 22 August 2016 and informed the parties that it would proceed to consider these matters on the papers as a preliminary issue, unless otherwise further directed.

5. On 18 August 2016, by regular email, the Applicant requested, due to personal reasons, a temporary suspension of the proceedings.

6. By Order No. 203 (NY/2016) dated 19 August 2016, the Tribunal granted the suspension of the proceedings requested by the Applicant and ordered him to file a submission addressing the issues of receivability raised in the Respondent's reply on or before 26 September 2016.

7. On 26 September 2016, the Applicant filed his response as per Order No. 203 (NY/2016).

8. By Order No. 7 (NY/2017) dated 11 January 2017, the Tribunal instructed the parties that, as a preliminary issue, it would proceed to consider the question of the receivability of the application on the papers before it.

### **Factual background**

9. It appears from the management evaluation letter dated 5 February 2016 (submitted in evidence by the Applicant) that, on 5 December 2012 and 28 June 2013, respectively, the Applicant filed two requests for management evaluation contesting the cancellation of selection exercises for two P-4 level investigator posts, to which he contends he received no response. In his application, the Applicant states the facts regarding his follow-up of these management evaluations in November 2015 as follows:











Administration the earliest opportunity to reconsider and remedy a situation in which an administrative decision has been challenged to avoid litigation (see, for instance, *Applicant* 2013-UNAT-381, *Kuadio* 2015-UNAT-558, *El-Shobaky* 2015-UNAT-564, *Nagayoshi* 2015-UNAT-498 and *Nwuke* 2016-UNAT-697). Whilst ordinarily, with a few exceptions, submission to management evaluation is a necessary requirement for having a case determined by the Dispute Tribunal, awaiting the receipt of MEU's response beyond the requisite time period is not. If the MEU fails to deliver a management evaluation within the prescribed period, by default, as the time for management evaluation may generally not be extended, the original administrative decision stands as adopted by the Respondent, which remains as the contestable decision.

20. Management evaluation is therefore an opportunity for the Administration to correct an administrative decision, including an implied administrative decision, such as a non-response or an omission, so as to avoid judicial review. Whilst a staff member is enjoined to file a request for management evaluation, there is no commensurate responsibility for the administration to respond. The Administration's response, or lack thereof, to a request for management evaluation is not a reviewable decision. Furthermore, if the decision itself cannot be subject to judicial review, then the procedures utilized by the Administration in reaching or not reaching a decision also cannot be subject to judicial review. In light hereof, the application is therefore not receivable.

21. Whilst the Tribunal understands the frustrations that may be felt by a staff member by untimely delays in MEU responses or the lack thereof, which may prejudice the timely correction of unlawful decisions, a staff member is enjoined to file an application contesting a contestable administrative decision.

22. In light of the conclusion and findings herein, the Tribunal need not therefore consider whether the application is time-barred or receivable *ratione temporis*.

**Conclusion**

23. In all the above circumstances, the Tribunal finds that the application is not receivable.

24. Accordingly, the application is dismissed.

*Signed*

Judge Ebrahim-Carstens

Dated this 26<sup>th</sup> day of April 2017

Entered in the Register on this 26<sup>th</sup> day of April 2017

*Signed*

Hafida Lahiouel, Registrar, New York