
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2018/052

Judgment No.: UNDT/2018/133

Date: 17 December 2018

Original: English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Nerea Suero Fontecha

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for instance, *Planas* 2010-UNAT-049, *Chriclow* 2010-UNAT-035, *Appellant* 2011-UNAT-143 and *Reid* 2014-UNAT-419).

14. In this case, the Respondent submits that the Applicant identified the outcome of his request for management evaluation as a contested decision, which is not a reviewable administrative decision.

15. It is settled law, as confirmed by the Appeals Tribunal in *Kalashnik* 2016-UNAT-661, that the contested decision which may be reviewed by the Dispute Tribunal is not the Administration's response to the request for management evaluation, but the administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment of the staff member.

16. It is also important to note that when deciding the scope of the case, the Tribunal is not limited to the parties' own identification and definition of the contested administrative decision(s) and may, based on the submissions, seek to identify the subject(s) of judicial review by itself. See, for instance, the Appeals Tribunal in *Fasanella* 2017-UNAT-765, para. 20, where it stated:

... Thus, the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review. As such, the Dispute Tribunal may consider the application as a whole,

the decision-maker would not be able to follow the correct process to accomplish his or her task. ...

... Thus, the authority to render a judgment gives the [Dispute Tribunal] an inherent power to individualize and define the administrative decision impugned by a party and identify what is in fact being contested and so, subject to judicial review.

18. It is also settled law that the nature and contents of a management evaluation response is indicative of what matters were considered in answer to a request for management evaluation (*Lemonnier* 2016-UNAT-679, para. 47).

19. In this case, at sec. V of the application form UNDT/F.1E, the Applicant states that the contested decision is that “[t]he Secretary-General decided to uphold the UNVMC contested decision” and identifies the decision-maker as the Under-Secretary-General for Management. In subsequent sections, at secs. VII (summary of the facts of the case or facts relied upon) and VIII (grounds for contesting the

be not subject to review by the Tribunal. Considering that the Applicant is self-represented and that the application as a whole clearly indicates that the Applicant is in fact challenging the underlying administrative decision by UNVMC, and not the conduct or recommendation of the management evaluation itself or the Secretary-General's response, and in line with the prevailing jurisprudence on the defining of an administrative decision, the Tribunal finds that the contested decision is UNVMC's decision in regard to the Applicant's relocation grant entitlement. The Respondent's plea on receivability is therefore specious, and the Applicant's claim is receivable.

Conclusion

21. In view of all of the foregoing, the present application is receivable. TJET2480 g162 TJET60.7601E

(Signed)

Judge Ebrahim-