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## **Introduction**

1. By application dated 4 April 2022, the Applicant contests the “[i]mplicit and continued denial by [the United Nations Development Programme (“UNDP”)] to conduct an occupational health evaluation after the reported and objective exposure to toxic contaminants in the workplace”.
2. On 5 May 2022, the Respondent filed a reply challenging



the exposure to specific toxic contaminants and to “put in place the corresponding measure to compensate each staff member”. In the alternative, the Applicant requests a declaration that UNDP has exposed him to toxic contaminants at the workplace and has failed to comply with its duty of care towards him. He also requests moral damages for the “high personal cost” resulting from the lack of response from the UNDP management;

b. The Applicant submits that the contested decision in this case is the implied administrative decision by UNDP not to conduct an occupational health evaluation of the Applicant after the objectively proven exposure to toxic contaminants at his workplace. He states that despite his repeated requests to the UNDP senior management to have this issue addressed, it was only on “the last day of [his] appointment” that he was made aware of the decision. He maintains that the implied decision directly affected the terms of his appointment and that in filing the application, he is asserting his individual rights covered under the terms of his employment contract and not acting as a representative on behalf of other staff.

8. The Respondent’s principal contentions can be summarized as follows:

a. On his part, the Respondent submits that the application is not receivable on two grounds. First, he argues that the Applicant has not identified an implied administrative decision that was taken within the applicable time limits under staff rule 11.2(c). This should normally involve an implied rejection of a specific request for an occupational health evaluation that was made by the Applicant on a specified date, to a named UNDP official, and that remained unanswered in the 60-day period prior to the filing of the Applicant’s second request for management evaluation on 23 November 2021;

b. The Respondent also challenges the application on the basis that the contested implied decision does not qualify as an administrative decision under art. 2(1)(a) of the Statute of the Dispute Tribunal as it does not have any direct legal consequences on the terms of the Applicant's appointment. In addition, the Respondent states that the Applicant seeks to challenge the contested implied decision in his former capacity as a staff representative and not in his individual capacity as a former staff member.

## **Considerations**

### *Receivability*

9. Article 2(1) of the Tribunal's Statute sets out the requirements for judicial review of a contested administrative decision while art. 8 establishes the receivability criteria. Pursuant to art. 8(c), an applicant must previously have submitted the contested administrative decision for management evaluation, where required, before filing an application before the Tribunal. Staff rules 11.2(c) and 11.4(d) also establish the deadlines for requesting a management evaluation and for filing an application.

10. Article 8(3) of the Tribunal's Statute provides, in part, that the Tribunal "shall not suspend, waive or extend the deadlines for decision review" and the Appeals Tribunal has strictly enforced this prohibition (see, for instance, *Chahrour* 2014-UNAT-406, para. 26, and also *Al Surkhi et al.* 2013-UNAT-304 and *Ajdini et al.* 2011-UNAT-108).

11. It is well established in the jurisprudence of the Appeals Tribunal that a staff member may challenge an implied administrative decision that arises from the Organization's silence in response to a specific complaint or request by the staff member

elements that both parties (Administration and staff member) can accurately determine” (see, for instance, *Rosana* 2012-UNAT-273, para. 25).

12. However, an applicant before the Tribunal is required to clearly identify the administrative decision which is the subject of the request and the particularity of any specific instance in which he or she made a request and the Administration had denied or ignored such a request. An applicant also has the statutory burden to establish that the contested administrative decision was in non-compliance with the terms of his or her appointment or contract of employment. Such a burden cannot be met where the applicant fails to identify an administrative decision capable of being reviewed, that is, a specific decision which has a direct and adverse impact on his or her contractual rights. (See, for instance, *Adnan-Tolon* 2019-UNAT-970, para. 28; *Argyrou* 2019-UNAT-969, para. 32; *Haydar* 2018-UNAT-821; and *Planas*

unilaterally taken by the Administration, be directed to the staff member, and have direct legal consequences for the staff member. See, for instance, *Lloret Alcaniz et al.* 2018-UNAT-840, para. 61 and *Adnan-Tolon* UNDT/2019/056, para. 7.

15. The Tribunal therefore finds that absent any identifiable administrative decision, the application is not receivable *ratione materiae*. There is no identified unilateral decision of individual application that carried direct legal consequences for the Applicant. The need to identify a specific administrative decision is obviously necessary for the purpose of determining when the 60-day time limit for management evaluation in terms of staff rule 11.2(c) commenced.

### **Conclusion**

16. In view of the foregoing, the Tribunal DECIDES to reject the application as not receivable.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 12<sup>th</sup> day of June 2023

Entered in the Register on this 12<sup>th</sup> day of June 2023

(Signed)

Isaac Endeley, Registrar, New York