



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2020/043
Judgment No.: UNDT/2021/028
Date: 24 March 2021
Original: English

Before: Judge Joelle Adda
Registry: New York
Registrar: Nerea Suero Fontecha

CHERNOV

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Omar Yousef Shehabi, OSLA

Counsel for Respondent:
Alan Gutman, ALD/OHR, UN Secretariat

Introduction

1. On 1 December 2020, the Applicant, a staff member with the Logistics Division of the Office of Supply Chain Management within the United Nations Department of Operational Support, filed an application contesting the following decisions relating to alleged changes to his reporting line:

a. “The removal of the Chief, Movement Control Section (“MCS”) as the Applicant’s first reporting officer (“FRO”) and supervisor, and replacement with a fellow movement control officer whom the Chief, MCS had designated a Team Leader;

b. The promulgation of separate Terms of Reference for MCS movement control officers based on their designation by the Chief MCS as Team Leaders or Team Members (the Applicant having been designated a Team Member) which purports to formalise the reporting line established by contested decision (a);

c. The decision (actual or implied) to grant the Chief MCS the authority to designate and remove movement control officers, including the Applicant, as Team Leaders at the Chief’s sole discretion; and

d. The decision, taken expressly in response to the Applicant’s challenge to contested decisions (a)-(c) and on a temporary basis, to designate an Air Operations Officer based in Entebbe as the Applicant’s FRO and supervisor”.

2. On 9 December 2020, the Respondent filed a motion to have the receivability of the application determined as a preliminary matter. The Respondent submitted that the application is not receivable *ratione materiae* as the Applicant fails to identify a reviewable administrative decision. Furthermore, the Respondent states that the application is moot as on 25 August 2020, the Organization designated an officer at the P-4 level from the Applicant’s section as the Applicant’s FRO.

3. On 17 December 2020, the Tribunal granted the Respondent's motion to have the receivability of the application determined as a preliminary matter.

4. For the reasons stated below, the Tribunal finds that the application is receivable only in respect of contested decision (b) relating to the changes in his reporting line. However, the matter is moot as the Administration designated an officer at the P-4 level from the Applicant's section as the Applicant's FRO, addressing the Applicant's immediate concerns while his department's structure remains in flux.

Facts

5. The Applicant serves as a Movement Control Officer at the P-3 level in the MSC of the Logistics Division, Office of Supply Chain Management, Department of Operational Support in New York.

6. The functional structure of the MSC consists of the following posts: one Chief, MCS at the P-5 level, seven Movement Control Officers at the P-3 level (including the Applicant), and four Movement Assistants at the General Service Levels.

7. The Applicant's FRO was the Chief, MCS and his second reporting officer ("SRO") was the Head, Logistics Division (D-2 level).

8. In 2018, MCS informally implemented, initially on a trial basis, a new team structure under which Movement Control Officers and Movement Assistants were assigned to one of three teams: the Cargo Movement Team, the Passengers Movement Team, and the Enabling Team. MCS movement control officers were designated Team Leaders or Team Members by the Chief, MCS. The Applicant was designated a Team Member of the Cargo Movement Team.

9. In late April 2020, the Chief, MCS informed the MSC team of a change to the staff members' reporting lines. The change in reporting line was that each Team Leader at the P-3 level would serve as the FRO for the Movement Control Officers (including

the Applicant) and Movement Assistants in her/his team, with the Chief, MCS becoming the SRO.

10. On 3 August 2020, the Applicant sought management evaluation of the decisions relating to the change to his reporting line, principally disagreeing with the decisions of the Chief, MCS to designate a fellow Movement Control Officer at the P-3 level as his FRO, and to formalize the supervisory line with terms of reference.

11. On 25 August 2020, the Applicant's reporting line was changed designating as his FRO an Air Operations Officer at the P-4 level of the Transport and Movement Integrated Control Centre located in Entebbe, Uganda.

Considerations

Receivability

12. The Respondent states that the application is not receivable because the Applicant fails to establish a contested decision that violates his terms of appointment. The Respondent notes that the Applicant identifies a number of documents as the decisions he seeks to contest. However, none of those documents communicate a reviewable administrative decision.

13. In *Selim* 2015-UNAT-581, the Appeals Tribunal stated that a statutory burden is placed upon an applicant to establish the administrative decision in issue. Such a burden cannot be met where the applicant fails to identify an administrative decision capable of being reviewed. Moreover, an administrative decision must be such that its date is based on objective elements that both parties (Administration and staff member) can accurately determine.

14. In the present case, the Tribunal notes that the Applicant seeks to challenge four administrative decisions. The Tribunal will review each contested decision in turn.

15. The first decision contested by the Applicant is “the removal of the Chief, MCS as the Applicant’s FRO and supervisor, and his replacement with a fellow movement control officer whom the Chief, MCS had designated a Team Leader”. In support of this decision, the Applicant relies on an email dated 6 July 2020 from the Cargo Team Leader to the Applicant requesting him to prepare a draft personal workplan. In the email, the Cargo Team Leader notes that the Applicant’s employment terms of reference will be amended in the future and until then the current terms of reference apply.

16. Upon review of the 6 July 2020 email, the Tribunal finds that the contents of the email do not produce any direct legal consequences affecting the Applicant’s terms and conditions of appointment, since the email only announces future anticipated revisions of the terms of references. The 6 July 2020 email does not remove “the Chief, MCS as the Applicant’s FRO and supervisor, and replace it with a fellow movement control officer whom the Chief, MCS had designated a ‘Team Leader’”. The email merely requests that the Applicant prepare his workplan. The preparation of a workplan is not a reviewable administrative decision. The first contested decision is therefore not receivable *ratione materiae*.

17. The second decision contested by the Applicant is “the promulgation of separate Terms of Reference for MCS movement control officers based on their designation by the Chief MCS as Team Leaders or Team Members (the Applicant having been designated a Team Member)” which purports to formalise a change in his reporting line. In support of this decision, the Applicant relies on terms of references for staff members assigned as “Team Member” or “Team Leader” in the Cargo Movement Team.

18. The Tribunal notes that the terms of reference do establish changes in the Applicant's reporting line, namely, that the Applicant as a Movement Control Officer will report to a fellow P-3 level Team Leader as his FRO and to the Chief, MCS as SRO. The Applicant previously reported to the Chief, MCS (at the P-4 level) as his FRO and the Head, Logistics Division as his SRO (at the D-2 level). Based on this, the Tribunal finds that the record confirms that there was a change to the Applicant's reporting line.

19. To be reviewable, an administrative decision must have the key characteristic in that it must "produce direct legal consequences" affecting a staff member's terms or conditions of appointment.¹ The Tribunal finds that the change to the designation of the Applicant's FRO and SRO are contestable administrative decisions. As this Tribunal has recently reaffirmed in *Teklie* 2020/UNDT/031, "the assignment of a SRO, who plays a significant role in a staff member's performance appraisal – the legal consequences of which are obvious – does affect the terms and conditions of the Applicant's appointment." The Tribunal considers the same rationale would apply to the designation of an FRO who also plays a primary role in a staff member's performance appraisal. Accordingly, the contested change to the Applicant's reporting officers do falls under the Tribunal's jurisdiction and is a reviewable administrative decision. The second contested decision is therefore receivable.

20. The third decision contested by the Applicant is "the decision (actual or implied) to grant the Chief, MCS the authority to designate and remove movement control officers, including Applicant, as Team Leaders at the Chief's sole discretion". In support of this decision, the Applicant relies on the organizational structure of the Movement Control Section. In the Tribunal's view, the organizational structure of Movement Control Section does not communicate an administrative decision. The organizational structure carries no direct legal consequences to the Applicant's terms and conditions of service. The Applicant seems to be speculating that the changes to

¹ *Andati-Amwayi* 2010-UNAT-058. See also *Ngokeng* 2014-UNAT-460, *Bauza Mercere* 2014-UNAT-404, *Wasserstrom* 2014-UNAT-457.

the structure of the Movement Control Section may indirectly impact his future career opportunities; however this does not amount to a contestable administrative decision. The Dispute Tribunal has no jurisdiction to hear appeals against decisions of indirect impact or which may potentially affect a staff member in the future. The third contested decision is therefore not receivable.

21. The fourth decision contested by the Applicant is the decision to designate an Air Operations Officer at the P-4 level of the Transport and Movement Integrated Control Centre located in Entebbe, Uganda as his FRO. The Tribunal notes that, as the Respondent rightly points out, the Applicant failed to request management evaluation of this decision. This part of his application is therefore not receivable under art. 8.1(c) of the Tribunal's statute and staff rule 11.2(a).

22. As follows from the above considerations, the only appealable administrative decision is the decision to change the Applicant's reporting lines causing him to be supervised by a fellow P-3 level Team Leader as his FRO and to the Chief, MCS as his SRO. The Applicant having previously reported to the Chief, MCS (P-4 level) as his FRO and the Director of Logistic Division (D-2 level) as his SRO.

23. Having reviewed the record, the Tribunal finds that the application is moot regarding this decision since the administration changed the Applicant's reporting line on 25 August 2020, designating as his FRO an Air Operations Officer at the P-4 level based in Entebbe, Uganda. In accordance with this 25 August 2020 decision, the supervisory and reporting structures the Applicant seeks to rescind no longer apply to him. The Applicant is no longer supervised by a P-3 level Team Leader, but rather a P-4 level Air Operations Officer. As a result, the issues the Application presents are academic.

24. In *Kallon* 2017-UNAT-742, the Appeals Tribunal stated that a judicial decision will be moot if any remedy issued would have no concrete effect because it would be purely academic or events subsequent to joining issue have deprived the proposed resolution of the dispute of practical significance.

25. The Applicant correctly points out that the Appeals Tribunal in *Kallon* instructed that a finding of mootness is inappropriate where the Administration institutes temporary arrangements to address the contested decision. However, this principle is not applicable to the present case following the Tribunal's guidance in *Negasa* UNDT/2019/141, a case which examined issues similar to those presented in this application.

26. In *Negasa*, a security officer at the FS-5 level challenged the designation of a fellow FS-5 security officer as his FRO. Following his application, the Administration designated a Deputy Field Security Coordination Officer at the P-3 level as the Applicant's FRO and supervisor on a permanent basis. In the circumstances, the Tribunal, applying *Kallon*, was "satisfied that the Respondent is not seeking to "moot out" the case against him by temporarily or expediently discontinuing or formalistically reversing his decision to designate the [FS-5 level security officer] as the Applicant's supervisor/FRO".

27. The Applicant does not at all demonstrates his argument that *Negasa* is inapposite to the present case, which similarly involves a temporary designation of an FRO, expressly made for the purpose of addressing the Applicant's 'immediate concerns' while his department's structure remains in flux.

28. As a result, the issues the application presents are moot.

Conclusion

29. The application is dismissed.

(Signed)

Judge Joelle Adda

Dated this 24th day of March 2021

Entered in the Register on this 24th day of March 2021

(Signed)

Nerea Suero Fontecha, Registrar, New York