



Before: Judge Francesco Buffa

Registry: Geneva

Registrar: René M. Vargas M.

BELKHABBAZ

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, AAS/ALD/OHR, UN Secretariat

Introduction

1. On 17 September 2019, the Applicant, a former staff member of the Office of Staff Legal Assistance (“OSLA”) filed an application with the Tribunal contesting the 25 February 2019 letter from the Assistant Secretary-General, Office of Human Resources Management (“ASG/OHRM”). In that letter, the ASG/OHRM informed the Applicant that she had implemented the Appeals Tribunal Judgment *Belkhabbaz* 2018-UNAT-873 in relation to her complaint of prohibited conduct against the former Chief of OSLA.

2. On 8 October 2019, the Respondent filed a motion requesting, *inter alia*, for the Tribunal to address the receivability of the application as a preliminary matter and, on 18 October 2019, he filed his reply on the merits.

3. On 6 December 2019, the Respondent filed another motion to amend his initial motion to address receivability as a preliminary matter.

4. By Order No. 118 (GVA/2019) of 18 December 2019, the Respondent’s 6 December 2019 motion was granted, and the Applicant was granted leave to file her comments on the Respondent’s motions, which she did on 9 January 2020.

5. On 26 January 2021, the present case was assigned to the undersigned Judge.

6. By Order No. 41 (GVA/2021) of 15 February 2021, the Tribunal informed the parties of its finding that the matter could be determined on the papers without holding a hearing and ordered them, *inter alia*, to file closing submissions by 25 February 2021. Only the Respondent filed his closing submission as instructed.

Facts

7. On 21 April 2012, the Applicant filed a complaint against the former Chief of OSLA with the Deputy Secretary-General, pursuant to the Secretary-General’s Bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority). The complaint alleged improper deprivation of functions, discrimination and abuse of authority, retaliation through

performance appraisals, defamation, and preferential treatment of another staff member.

8. The complaint was investigated by two separate fact-finding panels resulting ultimately in a 25 October 2016 finding by the Officer-in-Charge, ASG/OHRM (“OIC ASG/OHRM”) that no prohibited conduct had taken place and, consequently, deciding to close the matter without further action.

9. The Applicant challenged the 25 October 2016 decision before this Tribunal. In its Judgment *Belkhabbaz* UNDT/2018/016/Corr.1 dated 5 February 2018, this Tribunal rescinded the contested decision to take no further action and remanded the case to the ASG/OHRM to institute disciplinary procedures against the former Chief of OSLA in accordance with section 5.18(c) of ST/SGB/2008/5. The Tribunal also ordered, *inter alia*, that the Applicant be paid moral damages.

10. The above-mentioned Judgment was appealed. In its Judgment *Belkhabbaz* 2018-UNAT-873 dated 26 October 2018, the Appeals Tribunal found that the UNDT had erred in ordering the ASG/OHRM to “institute” disciplinary procedures against the former Chief of OSLA in accordance with Section 5.18(c) of ST/SGB/2008/5 because a finding by the UNDT that the contested decision was irrational could not constitute a final determination of misconduct on the part of the former Chief of OSLA.

11. The Appeals Tribunal also considered that although the order of the UNDT remanding the matter to the ASG/OHRM to proceed with disciplinary proceedings was within the competence of the UNDT, its order directing the ASG/OHRM to “institute” disciplinary proceedings impinged upon the discretion of the ASG/OHRM. The Appeals Tribunal accordingly ordered to substitute that order with one directing the ASG/OHRM “to proceed in relation to this matter in accordance with the provisions of [s]ection 5.18(c) of ST/SGB/2008/5”. The Appeals Tribunal also reduced the compensation for moral damages granted by the UNDT to the Applicant.

12. By letter dated 25 February 2019, referred to in para. 1 above, the ASG/OHRM informed the Applicant that the former Chief of OSLA had separated from the United Nations and accordingly pursuant to section 5.18(c) of ST/SGB/2008/5 a note would be placed in his Official Status File (“OSF”) indicating that the “matter was subject to further review at the time of his separation”.

13. Dissatisfied with this outcome, on 6 May 2019, the Applicant requested management evaluation of the 25 February 2019 decision.

14. By letter dated 19 June 2019, the Under-Secretary-General for Management Strategy, Policy and Compliance (“USG/MSPC”) replied to the Applicant’s request for management evaluation. The contested decision was upheld.

15. On 15 October 2019, the Applicant filed an application for execution of Judgment *Belkhabbaz* 2018-UNAT-873 before the Appeals Tribunal. In its Judgment *Belkhabbaz* 2020-UNAT-1027 dated 26 June 2020, the Appeals Tribunal found that the Secretary-General had fully and properly executed the Judgment and thus decided to dismiss the application.

Consideration

16. In light of the parties’ submissions, the Tribunal will address the receivability of the application as a preliminary matter.

17. The Respondent argues that the Applicant does not contest an administrative decision under art. 2.1(a) of the Tribunal’s Statute.

18. Art. 2.1(a) of the Tribunal’s Statute provides, in its relevant part, that the Tribunal is competent to review an application filed against the Secretary-General appealing “an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment”.

19. While in general a staff member is only entitled to contest before the Tribunal an administrative decision affecting his/her terms of appointment and, consequently, there is no right to challenge a decision concerning third parties, it has to be noted that sec. 5.18(c) of ST/SGB/2008/5 provides that:

If the report indicates that the allegations were well-founded and that the conduct in question amounts to possible misconduct, the responsible official shall refer the matter to the [ASG/OHRM] for disciplinary action [...] The [ASG/OHRM] will proceed in accordance with the applicable disciplinary process and will also inform the aggrieved individual of the outcome of the investigation and of the action taken.

20. The Applicant, as the aggrieved individual, was entitled to be informed of the outcome of the investigation and the action taken pursuant to sec. 5.18(c) of ST/SGB/2008/5. The Tribunal notes that she received a letter dated 25 February 2019, which reads, in its relevant part, as follows:

[P]lease be advised that [the former Chief of OSLA] has separated from the UN system and is no longer a staff member under the authority of the Secretary-General.

However, managerial action has been taken to ensure that information about the matter is retained. In particular, a note will be placed on [his] official status file to document that this matter was subject to further review at the time of his separation.

21. Section 5.18(c) of ST/SGB/2008/5 cannot be read as providing a mere right to be informed; indeed, given the wording used, i.e., that “the responsible official shall refer the matter ... for disciplinary action” and that “[t]he [ASG/OHRM] will proceed in accordance with the applicable disciplinary process” and the reference to “the outcome of the investigation and of the action taken”, this rule must be interpreted as providing a right to the aggrieved staff member that a disciplinary process be started unless exceptional circumstances arise.

22. In the present case, for instance, the person to be disciplined was no longer a staff member, and the parties disagreed on whether the Organization properly exerted its discretion to discipline or not a former staff member.

23. In any case, the choice by the Administration to take (or not) managerial action can adversely impact the rights of aggrieved individual as mentioned above. There is, therefore, an administrative decision that the Applicant can challenge before this Tribunal pursuant to art. 2.1(a) of its Statute.

24. Consequently, the application is receivable *ratione materiae* in this respect.

25. The Tribunal notes that the Applicant's rights under 5.18(c) of ST/SGB/2008/5 were recognized by this Tribunal in *Belkhabbaz* UNDT/2018/016/Corr.1, and by the Appeals Tribunal in *Belkhabbaz* 2018/UNAT/873 in which the latter ordered the ASG/OHRM "to proceed in relation to this matter in accordance with the provisions of [s]ection 5.18(c) of ST/SGB/2008/5".

26. Almost a month after filing the application referred to in para. 1 above, the Applicant also requested the execution of Judgment *Belkhabbaz* 2018-UNAT-873 before the Appeals Tribunal.

27. This Tribunal finds that the Applicant cannot duplicate her claims by lodging applications before this Tribunal and the Appeals Tribunal on the same subject matter, nor maintain parallel proceedings before them. Moreover, this Tribunal concludes that under the circumstances, only the Appeals Tribunal is competent to rule on the matter.

28. In *Belkhabbaz* 2020-UNAT-1027, the Appeals Tribunal found that "[i]n taking managerial action in accordance with [sec.] 9.7 of ST/AI/2017/1, the ASG/OHRM proceeded in terms of [sec.] 5.18(c) of ST/SGB/2008/5 and in accordance with the applicable disciplinary procedures". The Appeals Tribunal thus held that the Organization had "fully and properly executed" *Belkhabbaz* 2018-UNAT-873.

29. By the above-mentioned Judgment, the Appeals Tribunal ruled on the issue at stake, implicitly confirming its (exclusive) jurisdiction.

30. It follows that the application before this Tribunal is not receivable.

Conclusion

31. In view of the foregoing, the Tribunal DECIDES the application is not receivable.

(Signed)

Judge Francesco Buffa

Dated this 30th day of April 2021

Entered in the Register on this 30th day of April 2021

(Signed)

René M. Vargas M., Registrar, Geneva