



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2021/028

Judgment No.: UNDT/2021/136

Date: 19 November 2021

Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

GAKIRA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Cynthia Cline, ECA

Introduction

1. The Applicant, a staff member of the United Nations Economic Commission for Africa (“ECA”) appealed the Management Evaluation Unit’s (“MEU”) “evaluation regarding [his] complaint against ECA for harassment and abuse of power”.

2. The Respondent replied that the application is not receivable and, in any event, without merit.

3. For the reasons set out below, the Tribunal rejects the application in its entirety as not receivable.

Relevant facts

4. On 1 May 2019, the Applicant wrote to the Executive Secretary of the ECA to complain that he had been the victim of harassment from the ECA and an ECA employee. He stated that he deemed the Administration “answerable for its abuse of authority” and for the acts of its employee. The Applicant further noted that the facts of the case were “common knowledge and irrefutable” and that it was therefore unnecessary to investigate them. He, nevertheless, requested that the said facts be “ascertained and the appropriate decision made”.

5. On 24 May 2019, the Applicant wrote the Executive Secretary again to inform her that he had decided to “file [his] complaint with the Tribunal and claim damages for the harm suffered over the last 12 years”. He further stated that he sought compensation for the harm suffered, as well as “a disciplinary measure that will put an end to the harassment once and for all”.

6. On 10 June 2019, the Executive Secretary informed the Applicant that she was not in a position to admit the facts presented by him without a fact-finding investigation

and that she would refer the matter to the Office of Internal Oversight Services (“OIOS”) for their consideration.

7. On 2 October 2019, the Executive Secretary wrote the Applicant to notify him that OIOS had referred his complaint back to her for her to handle the matter. She further reminded the Applicant that no disciplinary sanction could be imposed on a staff member absent in an investigation and stated that she had taken managerial action with respect to the ECA employee, who the Applicant accused of misconduct.

8. On 27 November 2019, the Applicant requested management evaluation of the “[d]ecision of the [OIOS] not to investigate into a complaint made by [the Applicant] under ST/SGB/2008/5 [Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority] and of the ECA not to take adequate protective measures to protect [the Applicant] from harassment”.

9. On 14 January 2020, following the management evaluation process, the Administration decided to uphold the contested decision.

Consideration

Scope of the application

10. The Appeals Tribunal has held that “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”. When defining the issues of a case, the Appeals Tribunal further held that “the Dispute Tribunal may consider the application as a whole”. See *Fasanella* 2017-UNAT-765, para. 20, as affirmed in *Cardwell* 2018-UNAT-876, para. 23.

11. The Tribunal notes that in his application, the Applicant characterizes the challenged decision as the “MEU evaluation regarding [his] complaint against ECA for harassment and abuse of power.” As stated above, MEU reviewed the Applicant’s

challenge of the decision not to take further action following his complaints of 1 and 24 May 2019.

12. On 8 November 2021, the Applicant further clarified the scope of his challenge and his request for relief as follows:

- a. Contrary to the Respondent's statements, his May 2019 complaints did not concern another staff member but were rather directed to the ECA for having failed to protect him against harassment, in violation of sec. 2.2 of ST/SGB/2008/5;
- b. He does not request the initiation of an investigation on his complaint because the facts were known, verified and irrefutable, and he requested the ECA to accept these facts and compensate him for violation of his rights;
- c. He requested the imposition of administrative and disciplinary sanctions against "those who have harmed him".

13. In light of the above, the Tribunal understands that the Applicant seeks: (a) an admission by the Administration of his account of events and compensation for the harm caused by such events, absent any investigation and, (b) the imposition of sanctions against other staff members, absent any investigation.

Receivability of the application

14. The Appeals Tribunal has defined an appealable administrative decision under sec. 2.1(a) of the Dispute Tribunal's Statute as "a unilateral decision of an administrative nature taken by the administration involving the exercise of a power or the performance of a function in terms of a statutory instrument, which adversely affects the rights of another and produces direct legal consequences" (see *Lloret Alcañiz et al.* 2018-UNAT-840, para. 61).

15. The Respondent objects to the receivability of the application because the Applicant does not identify which contractual rights that may have been violated.

16. The Applicant responds that the Administration violated his right to a harmonious work environment free of harassment and abuse of authority, recognized in sec.2.2 of ST/SGB/2008/5. He insists, however, that the Administration ought to admit to this without the need for a fact-finding process as this fact is “known, verified and irrefutable”.

17. The Tribunal recalls the well-settled jurisprudence of the Appeals Tribunal that the institution of disciplinary proceedings is the privilege of the Organization (see, for instance, *Benfield-Laporte* 2015-UNAT-505, para. 37).

18. The Tribunal further recalls that pursuant to staff rule 10.3 and ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process), a finding of misconduct and subsequent imposition of sanctions on a staff member may only be established through the proper investigative process.

19. Therefore, an alleged violation of the Applicant’s rights and subsequent legal consequences may only be established through the appropriate legal process. The Applicant has no right to the Administration’s blanket acceptance of his account of events, nor to the imposition of sanctions against another staff member without due process.

20. Therefore, this aspect of the application does not constitute an appealable decision and is not receivable *ratione materiae*.

21. The Applicant further requests compensation for the harm caused to him. However, rather than challenging the legality of an administrative decision, which may have had legal consequences on his contractual rights, the Applicant demands that said harm be recognized by the Administration on the basis of his account of events.

22. As stated above, the Applicant is not entitled to such recognition of facts. Therefore, he has failed to identify a challengeable administrative decision.

23. This aspect of his application is therefore also not receivable *ratione materiae*.

Conclusion

24. In light of the foregoing, the application is rejected as not receivable.

(Signed)

Judge Joelle Adda

Dated this 19th day of November 2021

Entered in the Register on this 19th day of November 2021

(Signed)

For:
Nerea Suero Fontecha, Registrar, New York