



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2021/047/T
Judgment No.: UNDT/2021/147
Date: 1 December 2021
Original: English

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

RUBWINDI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:
Evelyn W. Kamau, OSLA

Counsel for Respondent:
Jonathan Croft, ALD/OHR, UN Secretariat
Lucienne Pierre, ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a former staff member of the Regional Service Center in Entebbe, appealed the decision to withdraw his after-service health insurance entitlements (“ASHI”).

2. The Respondent replied that the application was not receivable, because the Applicant had failed to submit it for management evaluation and that, in any event, it is without merit.

3. The case was originally filed in the Nairobi Registry and transferred to the New York Registry on 20 October 2021.

4. For the reasons set out below, the Tribunal dismisses the application in its entirety as not receivable *ratione materiae*, because the Applicant failed to seek timely management evaluation.

Relevant facts

5. The Applicant separated from the Organization on 11 February 2020 following a disciplinary process.

6. On 1 April 2020, the Assistant Secretary-General for Human Resources (“ASG/OHR”) provided the Applicant with a report of investigation from his insurance carrier, which concluded that he had submitted a fraudulent claim for reimbursement of medical expenses.

7. The ASG/OHR requested the Applicant’s comments on the investigation report with a view to determine whether any action, in addition to the recovery of the wrongfully claimed amount, should be taken. The ASG/OHR stated that one of the

possible actions to be considered would be the withdrawal of the Applicant's ASHI entitlements.

8. The Applicant did not submit any comments to the investigation report.

9. On 7 July 2020, the ASG/OHR informed the Applicant that after review of the investigation report and the supporting documentation, it was established by a preponderance of evidence that he had falsified documents in order to claim the reimbursement of medical fees. Accordingly, the Under-Secretary-General for Management Strategy, Policy and Compliance had decided to withdraw the Applicant's ASHI entitlements with immediate effect.

Consideration

10. Staff rule 11.2(a) provides that a staff member wishing to contest an administrative decision must first request management evaluation of said decision.

11. Staff rule 11.2(b) states that appeals to decisions taken at Headquarters in New York imposing a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following the completion of a disciplinary process do not require a request for management evaluation.

12. Pursuant to sec. 8 of ST/AI/2017/1 ("Unsatisfactory conduct, investigations and the disciplinary process"), a disciplinary process is initiated by the issuance of written allegations of misconduct accompanied by a copy of the relevant investigation report. The staff member is notified of his or her right to respond and to seek assistance of counsel.

13. Therefore, what determines whether a challenged administrative decision must be submitted for management evaluation is whether it follows the completion of a disciplinary process conducted pursuant to this framework.

14. The Respondent argues that in the present case, the Administration did not initiate a disciplinary process in the sense of ST/AI/2017/1. Therefore, if the Applicant wished to appeal the contested decision, he ought to have submitted it for management evaluation. Having failed to do so, the application is not receivable *ratione materiae*.

15. The Applicant responds that the contested decision is disciplinary in nature, because it is not one of the possible administrative measures concerning staff members' entitlement to remuneration that the Secretary-General can impose under staff rule 10.4.

16. He further argues that disciplinary measures have permanent effects on the staff members' entitlements. The contested measure not being temporary, it can only be considered as disciplinary in nature.

17. The Applicant further avers that the Respondent should not be permitted to circumvent the disciplinary process by arguing that the present application is not receivable. The Respondent opted not to pursue a disciplinary process, yet, he opted to impose a disciplinary measure, thereby violating the Applicant's rights.

18. Finally, the Applicant states that the Respondent rescinded the impugned decision by ordering retroactively the reinstatement of the Applicant's ASHI entitlements from 7 July 2020 onwards. However, the Applicant argues that the remainder of the requested remedies, meaning the financial compensation for the economic loss incurred due to the improper withdrawal of ASHI and the moral damages remain under dispute.

19. The Tribunal notes that as per the Applicant's own admission, no disciplinary process was initiated in this case.

20. A review of the record further confirms this fact. In the 1 April 2020 letter, nothing is stated that may have given the Applicant the impression that a disciplinary process in the sense of staff rule 10.3 and sec. 8.3 of ST/AI/2017/1 had been initiated,

let alone completed. The letter makes no mention of allegations of misconduct or to the initiation of a disciplinary process. It also does not notify the Applicant of his right to seek the assistance of counsel, either provided by the Office of Staff Legal Assistance or at his own expense.

21. The Tribunal concludes from these observations that the 1 April 2020 letter does not qualify as a letter of allegations of misconduct as defined in staff rule 10.3.

22. The Tribunal then reviewed the 7 July 2020 letter and notes that it does not make any finding of misconduct, nor does it mention the imposition of a sanction, either disciplinary or non-disciplinary, under staff rule 10.2.

23. In light of the foregoing, the Tribunal concludes that the 7 July 2020 decision, lawful or not, does not result from a disciplinary process and is therefore not exempted from management evaluation.

24. Accordingly, in application of staff rule 11.2, the Applicant ought to have requested management evaluation before filing his appeal before this Tribunal. Having failed to do so, the application is not receivable *ratione materiae*.

Conclusion

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

(Signed)

Judge Joelle Adda

Dated this 1st day of December 2021

Entered in the Register on this 1st day of December 2021

(Signed)

Nerea Suero Fontecha, Registrar, New York