

Case No.:



Introduction

1. Before me is an application, received by the Registry of the United Nations Dispute Tribunal on 27 August 2009, to appeal an administrative decision taken on 20 April 2009 by the Chief Civilian Personnel Officer of the United Nations Stabilization Mission in Haiti (MINUSTAH) to stop payment of the applicant's salary as of end April 2009. In his application, the applicant requests the Dispute Tribunal to order MINUSTAH to pay his salary on a monthly basis, from April 2009 until the outcome of his appeal. There are no particulars substantiating any other claims in this application, nor a prayer for any other relief.

2. Despite several requests from the Registry of the Dispute Tribunal to clarify whether he had requested an administrative review or management evaluation of the contested decision regarding his alleged salary entitlement, and although he submitted various documents in support of his application, the applicant failed to provide the Dispute Tribunal with a copy of any such administrative review or management evaluation, or a copy of a request of such a review or evaluation.

3. On 13 October 2009, the applicant, for the very first time, sent to the Dispute Tribunal a copy of a Management Evaluation Report, dated 13 August 2009, of "the decision of 29 May 2009 not to renew [his] . . . appointment [of limited duration] beyond its expiration date of 30 June 2009". The report was accompanied by a letter dated 18 August 2009, in which the applicant writes that he intends to appeal "the decision of August 13 2009", clarifying the remedies that he seeks, i.e. payment of his salary and renewal of his contract.

4. On 22 October 2009, following the respondent's failure to file a reply, I ordered the respondent to file its reply by no later than 26 October 2009, and the applicant to file his answer by no later than 29 October 2009. I further directed that the matter be

dealt with on the papers unless the parties indicated otherwise by no later than 30

9. The applicant responded on 29 April 2009, alleging that he was a victim of harassment and threats and that the decision to transfer him against his will was discriminatory, punitive, and a way to intimidate him in order to protect the harasser. He further alleged that he had repeatedly used the channels provided by the institution to no avail and had received no response on the complaints he had made regarding abuse of power.

10. Thereafter a decision was taken not to extend the applicant's contract beyond 30 June 2009. The Management Evaluation Report, provided to the Dispute Tribunal by the applicant, states that the applicant requested a suspension of action of the decision not to extend his contract, and that his appointment was extended until 30 July 2009 as the Deputy Secretary-General had granted a request to allow time for his performance evaluation report to be finalized.

11. However, it appears from Annex I and Annex III to the reply that the applicant did not report for duty from 7 April to 30 June 2009, and was separated from service effective 31 July 2009.

Applicable law

12. Former staff rule 111.2(a) provided that:

A staff member wishing to appeal an administrative decision pursuant to staff regulation 11.1 shall, as a first step, address a letter to the Secretary-General requesting that the administrative decision be reviewed; such letter must be sent within two months from the date the staff member received notification of the decision in writing.

to the Secretary-General in writing a request for a management evaluation of the administrative decision.

...

(c) A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within sixty calendar days from the date on which the staff member received notification of the administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

14. Pursuant to article 8.1 of the Statute of the United Nations Dispute Tribunal (Statute) an application shall be receivable if, *inter alia*:

(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required; and

(d) The application is filed within the following deadlines:

(i) In cases where a management evaluation of the contested decision is required:

a. Within 90 calendar days of the applicant's receipt of the response by management to his or her submission; or

b. Within 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for other offices.

15. The Secretary-General's bulletin ST/SGB/2009/11, dated 24 June 2009, clarifies, in sub-section 1.4, that:

As of 1 July 2009, the United Nations Dispute Tribunal will be established as the first tier of the formal system of justice. For the purpose of determining the receivability of an application filed with the United Nations Dispute Tribunal, a staff member who has submitted a request for an administrative review of a contested administrative decision prior to 1 July 2009 shall be considered to have satisfied the requirement to submit a request for a management evaluation, as provided in article 8, paragraph 1(c), of the statute of the United Nations Dispute Tribunal.

16. It is clear from the provisions above and the Dispute Tribunal's jurisprudence that a request for an administrative review or management evaluation is mandatory, with the exception of disciplinary cases.²

Analysis

17. The application before me clearly relates to the contested administrative decision to stop paying the applicant's salary as of April 2009.

18. The applicant did not request an administrative review or management evaluation of the contested decision as required, although he has sought a management evaluation of the decision not to renew his appointment.

19. The applicant's request for a management evaluation of the decision not to renew his appointment does not satisfy the receivability requirement under article 8.1(c) of the Statute for the purposes of the current application, since the administrative decision to stop payment of the applicant's salary and the administrative decision not to renew his appointment are two distinct administrative decisions taken at separate times.

20. It is clear from the applicant's submissions that the applicant was well aware that these are two discrete decisions, and from his application filed with the Registry of the Dispute Tribunal it is clear that he is contesting only the decision to stop full payment of his salary during his employment period. To date the applicant has not filed any application contesting the decision not to renew his contract and he would be best advised to do so immediately.

² United Nations Dispute Tribunal, Judgment No. UNDT/2009/35, *Caldarone*, para. 8.7 (2009).

Conclusion

21. In light of the applicant's failure to request an administrative review or management evaluation of the contested decision not to pay his salary, I conclude that this current application before me is not receivable.

(Signed)

Judge Memooda Ebrahim-Carstens

Dated this 6th day of November 2009

Entered in the Register on this 6th day of November 2009

(Signed)

Hafida Lahiouel, Registrar, New York