
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2019/067

Judgment No.: UNDT/2020/001

Date: 7 January 2020

Original:

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made against me as part of the disciplinary inquiry and I want to stress that my resignation is not linked in any manner to the progress of this inquiry”.

7. On 7 June 2017, the Applicant submitted his comments on the formal allegations of misconduct.

8. Effective 1 July 2017, the Applicant resigned from the Organization.

9. In July 2017, subsequent to the Applicant’s resignation, he was informed of his selection for a position with the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (“MINUSCA”) and he confirmed his interest and availability for the position.

10. On 28 July 2017, the Administration sent an email to the Applicant asking him to clarify his intention as he confirmed his interest and availability for positions with MINUSMA and MINUSCA, respectively, and yet he resigned effective 1 July 2017.

11. On 31 July 2017, the Applicant explained his situation and wrote in an email, “I realized that I ran the risk of being dismissed from the United Nations. Instead of undergoing this dishonor, and also to avoid to find myself suddenly without a job and with a family depending on me, I decided to resign and I started another job”. H2 792 reW*ⁿBT/F1 12

13. On 5 August 2017, the Applicant responded that he chose to maintain the resignation as he could not take a risk of being dismissed. He wrote that he would still contest the allegations against him until his name was cleared.

14. On 3 October 2017, the Chief, ALS/OHRM notified the Applicant that the following note would be placed in his Official Status File and he was requested to provide his comments in accordance with ST/AI/292 (Filing of adverse material in personnel records):

[The Applicant] resigned from the Organization effective 1 July 2017.
At that time, a matter concerning [him] had not been resolved.

Please contact the Administration at (At that time)-3(m

contested administrative decision has previously been submitted for management evaluation, where required.

22. In *Chahrour* 2014-UNAT-406, at para. 31, the Appeals Tribunal stated that to determine the date by which a staff member must seek review of an implied decision, the Dispute Tribunal must establish the date on which “the staff member knew or reasonably should have known of the implied decision”.

23. In the present case, the Tribunal finds that the Organization made it clear by the email of 2 August 2017 that it would not further continue a disciplinary process against the Applicant if he maintained his resignation and that it would resume and complete such process if he becomes a staff member again. As stated above, the Applicant also acknowledges that based on the email of 2 August 2017,

the process, he resigned within a month after submitting his comments on the formal allegations.

30. The Tribunal agrees with the Respondent that the Applicant has no right to the completion of a disciplinary process since the Administration cannot impose a disciplinary measure on him as a former staff member. The Tribunal finds that the Dispute Tribunal's reasoning in *Applicant* UNDT/2010/069/Corr.2, paras. 12 and 14 persuasive when it states that: "All the disciplinary measures ... assume subsisting employment" because disciplinary proceedings "depend entirely upon the subsistence of the contractual entitlement to subject a staff member to [disciplinary proceedings], on the one hand, and the contractual obligation of the staff member to suffer them in accordance with the relevant instruments, on the other".

31. The Applicant argues that the Administration is duty bound to comply with the procedures prescribed under the relevant rules, especially para. 9 of ST/AI/371 (Revised disciplinary measures and procedures), which provides that once a disciplinary process was initiated, the Assistant Secretary-General of OHRM shall decide either to close the disciplinary case or to recommend the imposition of a disciplinary measure. However, as explained above, the Administration's obligation to complete a disciplinary process is predicated on the fact that a staff member has an ongoing employment relationship with the Organization and such obligation no longer exists toward a former staff member.

32. The Applicant still argues that the decision has direct legal consequences because it (a) will affect his right to be reemployed with the Organization in the future, (b) places an indefinite duty to cooperate with the Organization, and (c) will result him in placing him on administrative leave immediately following any future reemployment. However, all these are only potential consequences that may arise in the future if the Applicant seeks employment with the Organization or is selected for a job and becomes a staff member again. As the Appeals Tribunal stated in *Lee* 2014-

UNAT-481, a decision must have a direct impact and not the potential of a future injury to be considered as an appealable administrative decision.

33. Therefore, the contested decision not to complete the disciplinary process against the Applicant is not an appealable administrative decision as it has no direct legal consequences affecting the terms and conditions of his appointment.

The decision to place a note in the Applicant's Official Status File

34. Regarding the decision to place a note in the Applicant's Official Status File, while not explicitly challenging the receivability of this decision, the Respondent submits that because of the non-prejudicial nature of the language used in the note, it is not adverse to the Applicant in any way in that it does not reflect adversely on the character, reputation, conduct or performance of the Applicant as it only states that a matter was not resolved at the time of the Applicant's separation and that ALS/OHRM should be contacted should the Applicant rejoin the Organization.

35. The Tribunal recalls that the note stated that the Applicant resigned from the Organization effective 1 July 2017 and at that time a matter concerning him had not been resolved. The note further asked that ALS/OHRM be contacted if the Applicant should become a staff member again. From the outset, the Tribunal notes that the information contained in the note placed in the Applicant's file is undisputed in that he resigned on 1 July 2017 and a disciplinary matter concerning the Applicant was unresolved at that time. The note further instructs that ALS/OHRM should be contacted if the Applicant rejoins the Organization. The question for the Tribunal is whether the decision to place a note of this nature is an administrative decision that produces

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resignation and its intention to resume such process should he rejoin the Organization, as clearly communicated in the email of 2 August 2017. The purpose of this note seems to be to ensure compliance with sec. 6.5(d) of ST/AI/2016/1 (Staff selection and managed mobility system), which provides that “[f]ormer staff members ... shall not be eligible to be considered for positions in the Secretariat following their separation from servi

Conclusion

40. The Tribunal rejects the application as not receivable.

~~to be reviewed by the Tribunal~~