
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2019/011

Judgment No.: UNDT/2020/047

Date: 1 April 2020

b528-10/ 144C1

Introduction

1. The Applicant, a staff member of the Secretariat of the Convention on Biological Diversity (“CBD”) of the United Nations Environment Programme (“UNEP”) filed an application contesting the decision to abolish her post.
2. The Respondent replied that the application was not receivable because the Applicant was not challenging an administrative decision with direct legal consequences on her terms of employment.
3. For the reasons below, the Tribunal rejects the application.

Relevant facts and procedure

4. On 3 August 2018, the Applicant filed a complaint of harassment and abuse of authority concerning her supervisor at the time in accordance with ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority).
5. On 13 September 2018, the Applicant was informed by her former supervisor and other managers of UNEP that some of the functions of her office would be merged with other divisions as part of the restructuring of the CBD and her post would

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14. The Applicant finally requests a full hearing in this case to determine the lawfulness of the decision to abolish her post.

15. The Respondent opposes that there should be such a hearing. He submits that once the Applicant has been placed on an established post at her same level, the application is not receivable because the Applicant is not contesting an administrative decision having direct legal consequences in the Applicant's employment. He states that the issue of the investigation into the Applicant's complaint of harassment is a separate matter.

16. In light of the parties' arguments, the Tribunal will first determine the scope of the case before it.

17. In *Loeber* 2018-UNAT-844, the Appeals Tribunal recalled its constant jurisprudence stating that the key characteristic of an administrative decision subject to judicial review is that the decision must produce direct legal consequences affecting a staff member's terms and conditions of appointment.

18. In the same judgment, the Appeals Tribunal went on to recall that the Administration has power to restructure its departments. This discretion extends to the abolition of posts and the Tribunal may not interfere with a genuine organizational restructuring even though it may have resulted in the loss of employment of staff. An applicant cannot challenge the discretionary authority of the Administration to restructure the Organization or to abolish his or her post. The Applicant, however, may challenge an administrative decision resulting from the restructuring once that decision has been made.

19. In light of this jurisprudence, it is clear that the Applicant cannot contest the abolition of her post but only such administrative decisions that resulted from the abolition.

20. From the Applicant's submissions, the Tribunal understands that the Applicant identified two sets of actions resulting from the abolition of her post: on the one hand,

the complaint of harassment and abuse of authority, the Tribunal finds that it has no jurisdiction to review that administrative decision