
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2021/054/T

Judgment No.: UNDT/2021/139

Date: 24 November 2021

Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

MUGO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:

Víctor Rodríguez

Counsel for Respondent:

Jonathan Croft, ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a former staff member with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, suspend the consideration of her disciplinary process until such time the Applicant return to the employment of the Organization following her retirement.

2. The application was initially filed with the Nairobi Registry of the Dispute Tribunal on 26 October 2020 and transferred to the New York Registry on 21 October 2021.

3. For the reasons below, the Tribunal finds that the application is not receivable and rejects it in its entirety.

Facts

4. On 22 November 2018, the Applicant retired from the Organization.

5. On 24 June 2019, Assistant Secretary-General for Human Resources (Applicant a report from the Office of Internal concerning an investigation into allegations of misconduct by the Applicant.

6. Given that the Applicant had separated before the resolution of the matter, the ASG/OHR informed the Applicant that a note would be placed on her Official Status File and gave her four weeks to respond on whether she wished to comment on the note.

7. The ASG/OHR further informed the Applicant that given the pending allegations against her, which is a screening database accessible to the United Nations entities when conducting

recruitment exercises, in which it would be noted that the Applicant had separated on retirement with pending allegations of misconduct.

8. The Applicant was given a deadline to respond to this measure.

9. The Applicant provided the requested comments on 2 July 2019.

10. On 16 July 2019, the Applicant received an email from the Administrative Law Unit in which, on behalf of the ASG/OHR, she was asked to confirm that she was prepared to cooperate in the disciplinary process following the OIOS report. The Applicant responded in the affirmative.

11. By memorandum of 1 April 2020, the ASG/OHR informed the Applicant that she had decided to suspend the consideration of whether to initiate a disciplinary process until such time as she return to the employment of the Organization and that she would proceed to place the note referred to in her 24 June 2019 memorandum on

provide comments in relation to the note which would be placed on her Official Status File along with the note.

12. Finally, the ASG/OHR informed the Applicant that her name would not be included in the Clear Check database.

13. On 5 June 2020, the Applicant requested management evaluation of the 1 April 2020 decision. On 27 July 2020, the Applicant was informed that, following management evaluation, the Administration had decided to uphold the 1 April 2020 decision.

Consideration

Scope of the case

14. The Applicant contests two decisions: the decision not to complete a disciplinary process against her and the decision to place a note in her Official Status File.

15. As the Respondent challenges the receivability of the application, the Tribunal will preliminarily review this aspect of the case.

Non-initiation of a disciplinary process against the Applicant

16. The Appeals Tribunal settled jurisprudence provides that to be capable of appeal, an administrative decision must produce direct legal consequences affecting a
see *Kennes* 2020-UNAT-1073, para. 40).

17. In *Kennes*, t
to complete a disciplinary process against a staff member and instead resume it should
the staff member become a staff member again did not constitute an appealable
administrative decision un (para. 44).

18. Moreover, in *Kennes*, the Appeals Tribunal
conclusion that the Administration has no duty to proceed with, and lacks the capacity
to conduct, a disciplinary measure once a staff member has left the Organization, as its
authority to complete a disciplinary process is predicated on the fact that a staff member
has an ongoing employment relationship with the Organization (para. 45).

19. The A
stood ready to cooperate in the disciplinary process, the Administration had, in fact,
started the process which remains ongoing. She states that the Administration
expressed its clear intention to act with respect to the allegation of misconduct against

of a resolution.

20. The Tribunal finds this argument meritless.

21. Staff rule 10.3(a) states that no disciplinary sanction may be imposed following the completion of an investigation unless the concerned staff member has been notified, in writing, of the formal allegations of misconduct against him or her and given an opportunity to respond to these allegations.

22. Section 8.2(a) of ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process) also indicates that the disciplinary process is initiated with the issuance of written allegations of misconduct.

23. The record shows that no such written allegations were ever issued in relation to the Applicant. All the Administration did was inquire if the Applicant would be willing to cooperate with a disciplinary process.

24. Therefore, the Applicant cannot claim that the Administration had initiated a disciplinary process against her.

25. In any event, the Tribunal finds that *Kennes* applies *mutatis mutandis* to cases such as the present one, where the Administration, rather than suspending an ongoing disciplinary case, as in *Kennes*, decides not to even initiate the process.

26. Therefore, the Applicant had no right to force the Administration to complete a disciplinary process against her.

27. The Applicant further claims that, by suspending the consideration of initiating a disciplinary process, the Administration did not respect her right to due process.

34. The states, [The Applicant] separated from service with the Organization effective 22 November 2018. At the time, a matter had not been resolved. Please contact the Office of Human Resources, at Headquarters, in the event that [the Applicant] should become employed as a staff member within the United Nations Com

35. The Tribunal notes that, as in *Kennes*, this note

