
UNITED NATIONS DISPUTE TRIBUNAL

Case No: UNDT/NE/2021/108

Judgment No: UNDT/2022/066

Date: 14 July 2022

Original: English

Before: Judge Magret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye Berko

BAKAMBA

v.

**SECRETARY-GENERAL
OF THE UNITED NATIONS**

JUDGMENT ON RECEIVABILITY

**Counsel for the Applicant:
Self-represented**

**Counsel for the Respondent:
Elizabeth Gall, UNDP**

Introduction

1

by making funds directly available to humanitarian partners operating in countries affected by natural disasters and armed conflict⁶

6 Mr. Kibuya forwarded the email to the UNDP Office of Audit and Investigation (“OAI”)⁷ on 2 September 2018, and the OAI commenced investigations⁸ upon receipt of the allegations.

7 On 13 May 2019, OAI informed the Applicant that he was a subject of investigation involving allegations of receiving money from various partners.⁹

8 The Applicant was interviewed by OAI investigators on 29 May 2019, 13 August 2019, and on 5 February 2020.¹⁰ On 2 December 2020, OAI availed a copy of the draft investigation report to him and requested him to provide his comments and countervailing evidence by 12 December 2020.¹¹ The Applicant submitted his comments to the OAI on 12 December 2020.¹²

9 On 21 December 2020, the OAI produced on CE c

misconduct and that had he become aware of the misconduct while the Applicant was under a service contract, the contract would have been terminated in conformity with articles 8 and 13 of the service contract No F08/10 of 27 June 2011 and subsequent extensions¹⁴

11. By email of 4 November 2021, Ms Emily Chakavika, UNDP, Office Human Resources/Business Partner (“BMS/CHR”), based on the Resident Representative’s

14 The Applicant separated from the service of the Organization with immediate effect on 15 December 2021.¹⁸

15 On 4 January 2022, Ms Cumbly wrote to the Applicant informing him that he was cleared from allegations of misconduct as a staff member. She stated

In reviewing the matter, I have confirmed that the alleged misconduct took place when you were a Service Contract holder, and not a staff member. As a consequence, your conduct was not governed by the UN Staff Regulations and Rules at that time. It follows that you cannot be subject to disciplinary action pursuant to those Regulations and Rules and consequently, you are cleared from all allegations of misconduct. Please note that this conclusion extends to the procedural aspect of this matter. My decision does not constitute a finding that you are not responsible for the procurement fraud as described above.¹⁹

Receivability

Respondent's submissions

16 The Respondent submits that the application is not receivable as it does not meet the criteria

evaluation request under staff rule 11.2(b) must be very strictly interpreted under the general principle of law exceptio est strictissimae interpretationis (an exception is of the strictest interpretation) and “cannot be extended to other administrative decisions than the ones expressly mentioned in the relevant legal provisions”. Therefore, as the contested decision is not a disciplinary measure, and at the time of the application, management evaluation has not been submitted, the present application is not receivable.

Applicant's submissions

18 In response to the Respondent's submissions on receivability, the Applicant pleads that he had not been made aware about mechanisms for contesting administrative or disciplinary measures and was therefore ignorant about the requirement for seeking management evaluation. He questioned the fact that neither the Tribunal nor the Respondent advised him about this requirement in a timely manner; and yet they are seeking to rely on it to defeat his application.

Considerations

19 Staff rules 11.2(a) and (b) provide thus

(a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary General in writing a request for a management evaluation of the administrative decision.

(b) A staff member wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary General, or of a decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 102 following the completion of a disciplinary process is not required to request a management evaluation.

20 It is not disputed that the impugned decision relates to facts anterior to the Applicant's appointment. Also not in dispute is the fact that no disciplinary process

