
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2023/019

Judgment No.: UNDT/2024/025

Date: 29 April 2024

Original: English

Before: Judge Margaret Tibulya

Registry: New York

Registrar: Isaac Endeley

O'MULLANE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:

Cristian Gimenez Corte

Counsel for Respondent:

Lucienne Pierre, AS/ALD/OHR, UN Secretariat

supervision of the Chief Information Technology Officer (“CITO”) and the Applicant “ceased having visibility, oversight and responsibility to manage the [Office’s] budgetary and financial issues”.

b. Prior to the 2019 reform, there were two funding sources providing ICT support for United Nations peacekeeping operations and special political missions. In the months

matched to expenditures, and this “led to peacekeeping funding sources being repurposed to cross subsidize non peacekeeping activities”. Although “funds were surplus” in the appropriate regular funding source, the Controller did not approve the use of non-peacekeeping funds, thus denying “an opportunity to rectify a clear-cut case of cross funding”.

receivable because, under the applicable legal framework, the Applicant is not entitled to information about an investigation or action taken.

d. The Organization, and not the Applicant, is the aggrieved party of any alleged misconduct with respect to any staff member's possible noncompliance with the United Nations financial rules and regulations. As such, "the Applicant lacks sufficient direct and substantial interest in the decision necessary to confer standing".

Considerations

9. The Tribunal recalls that under the jurisprudence of the Appeals Tribunal, the Dispute Tribunal is required to satisfy itself that an application is receivable under art. 8 of its Statute (see, for instance, 2011-UNAT-182, as affirmed in *Christensen* 2013-UNAT-335, and *Barud* 2020-UNAT-998).

10. A staff member cannot compel the Organization to undertake an investigation unless such right is granted by the Staff Regulations and Rules of the United Nations (see the Appeals Tribunal in *Nwuke* 2010-UNAT-099, paras. 3 and 30). The receivability of an application contesting a refusal to initiate an investigation would therefore "depend on the following question: Does the contested administrative decision affect the staff member's rights directly"? (See *Nwuke*, para. 28, and similarly, *Ross* 2023-UNAT-1336, para. 24).

11. The main application concerns the alleged refusal by the Office of Internal Oversight Services ("OIOS") to open an investigation into the Applicant's report of prohibited conduct against the United Nations Controller, for possible noncompliance of the United Nations Controller with United Nations financial rules and regulations. The Applicant has not cited any regulations or rules, and the Tribunal finds none, which afford him a right to compel the Administration to conduct an investigation.

12. Moreover, the Tribunal agrees with the Respondent that the Organization, not the Applicant, is the aggrieved party in any alleged misconduct with respect to any staff

17. For the foregoing reasons, the Tribunal finds that the application is not receivable.

18. Having found that the application is not receivable, the Tribunal also determines that the Applicant's motions for interim measures; for the joinder of this case and Case No. UNDT/NY/2023/020; and for a hearing stand to be rejected.

Conclusion

19. The application is dismissed as not receivable.

~~012~~re2m(60)11237(6r)6)6 Con