Before: Judge Rachel Sophie Sikwese

Registry: New York

Registrar: Isaac Endeley

SCHIFFERLING

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Cristian Gimenez Corte

Counsel for Respondent:
Kong Leong Toh, UNOPS
Casey Morin, UNOPS

26.

before a final administrative decision is issued. The jurisprudence is consistent on the principle that an intermediary step taken by the Administration towards fact-finding of an allegation of unsatisfactory conduct is not reviewable as it lacks the finality that produces legal consequences on a staff member's terms of appointment.

32. In *Nguyen-Kropp & Postica* 2015-UNAT-509, para. 32, the Appeals Tribunal cautioned that: "tribunals should not interfere with matters that fall within the Administration's prerogatives, including its lawful internal processes, and that the Administration must be left to conduct these processes in full and to finality". The appellants in the cited case had challenged the decision to investigate them. This principle was applied in *Birya* 2015-UNAT-562, para. 47, a case concerning institution of a fact-finding panel to investigate possible acts of harassment. The case of *Auda* 2017-UNAT-786, para. 30, reiterates the *Nguyen-Kropp & Postica* principle that: an "administrative decision that concludes the compound administrative process in administering the staff member's complaint is the only challengeable one and absorbs all the previous preliminary steps".

33. Finally on jurisprudence on this issue, the Appeals Tribunal has settled the law by holding that (see *O'Brien* 2023-UNAT-1313, para. 24):

> … [W]here a decision requires several steps to be taken by different

40. Prior to this motion, on 18 September 2023, the Respondent had filed a motion urging the Tribunal to issue summary judgment in favour of the Respondent because "there is no dispute as to the material facts of the case and a party is entitled to judgment as a matter of law" pursuant to art. 9 of the Dispute Tribunal's Rules of Procedure.

41. The motions of 25 October 2023 and of 18 September 2023 were contested. On 26 October 2023 during the CMD, the Tribunal allowed each party to make oral submissions on the two motions. The Applicant insisted that the Secretariat was a necessary party to the proceedings and ought to be joined. The Respondent did not agree. The Respondent withdrew his motion for summary judgment instead opting that the Tribunal should dismiss the application as not receivable. After the submissions, the Tribunal issued a CMD Order on the same date, allowing the Respondent to withdraw the motion for summary judgment and to proceed to hear the matter on receivability. The Tribunal dismissed the Applicant's motion to join the Secretariat as party.

42. The Tribunal has taken judicial notice of the fact that the Applicant has filed a notice of appeal with the Appeal Tribunal to challenge Order No. 118 (NY/2023) denying the Applicant's motion to join the Secretariat as a party to these proceedings. As such the Tribunal will refrain from making any further observation on this matter. Suffice it to mention that the Applicant's Application in these proceedings is clearly and unequivocally against the UNOPS decision as his former employer and not the Secretariat. Further, the Applicant did not cite any rule of procedure or practice of this Tribunal that entitles him to join a party in the manner requested.

Judgment

43. The application is dismissed as not receivable ratione materiae.

(Signed)

Judge Rachel Sophie Sikwese
Dated this 4th day of December 2023

Entered in the Register on this 4th day of December 2023

(Signed)

Isaac Endeley, Registrar, New York