



6. In light of ST/SGB/2008/5, Chapter XI of the Staff Rules, and the UNDT Statute, the Appeals Tribunal concludes that, when the claims regard issues covered by ST/SGB/2008/5, the staff member is entitled to certain administrative procedures. If he or she is dissatisfied with their outcome, he or she may request judicial review of the administrative decisions taken. The UNDT has jurisdiction to examine the administrative activity (act or omission) followed by the Administration after a request for investigation, and to decide if it was taken in accordance with the applicable law. The UNDT can also determine the legality of the conduct of the investigation.

7. The judicial review of the administrative decision may result in the affirmation of the contested decision or its rescission. In the latter case, Article 10 of the UNDT Statute allows to order both the rescission and the performance needed to bring the administrative situation in compliance with the law.

8. In view of the foregoing, the Appeals Tribunal finds that the UNDT erred in finding the staff member's application not receivable. Nwuke in fact did challenge an administrative decision which he claimed was in non-compliance with his terms of employment. The UNDT therefore had jurisdiction to decide whether or not to order the conduct of an investigation or other courses of action concerning his accusations and complaints.

9. For the foregoing reasons, the Appeals Tribunal reverses the UNDT Judgment and remands the case to the UNDT for a trial on the merits.

Facts and Procedure

10. Nwuke is a staff member of ECA. On 12 June 2009, Nwuke was invited for an interview for the post of Director, Trade, Finance and Economic Development Division (TFED) of ECA. On 13 June 2009, Nwuke wrote to the Human Resources Service Section of ECA. He asserted that, in the past, ECA had appointed candidates from the roster for the post of Director, and since he had been placed on the roster for the post of Director, he should be treated in the same manner as the other rostered candidates.

for the post was properly taken in the circumstances and that the Secretary-General endorsed the MEU's conclusions. The Secretary-General also endorsed the MEU's conclusion that, in order to avoid even the appearance of a conflict of interest, ECA should reconfigure the composition of the Advisory Selection Panel (ASP) constituted to interview him.

12. On 8 September 2009, Nwuke submitted an application to the UNDT seeking an order to compel the ECA Administration to undertake investigations into his various complaints against ECA management and its administrative practices.

13. On 5 October 2009, the Executive Secretary, ECA, announced his decision to fill the post of Director, TFED.

14. On 14 October 2009, Nwuke filed an application with the UNDT seeking an order to suspend the implementation of the administrative decision dated 5 October 2009. On 26 October 2009, the UNDT issued Judgment No. 2009/054 rejecting Nwuke's application for suspension of action.

15. On 28 January 2010, the UNDT issued Judgment No. UNDT/2010/017. The UNDT noted that, under Article 2(1)(a) of its Statute, it had jurisdiction in relation to an administrative decision that was alleged to be in non-compliance with the terms of appointment or the contract of employment. It held that it could not compel the Organization to investigate Nwuke's complaints against ECA's Senior Management. An investigation is part of a disciplinary procedure which is the privilege of the Organization itself. The UNDT observed that Nwuke had recourse under the Staff Regulations and Rules to pursue his grievances in relation to his allegations of abuse of authority by ECA Management. It considered that Nwuke did not contest an administrative decision "that is alleged to be in non-compliance with the terms of [Nwuke's] appointment or contract of employment" as defined by the UNDT Statute and rejected his application as irreceivable.

16. Nwuke filed an appeal against Judgment No. UNDT/2010/017 on 14 March 2010. The Registry of the Appeals Tribunal forwarded the appeal to the Secretary-General on 24 March 2010 and the Secretary-General filed his answer on 10 May 2010.

Submissions

Nwuke's Appeal

17. Nwuke requests the Appeals Tribunal to find his appeal receivable under Article 2 of its Statute; to rescind the UNDT's decision rejecting his application; and to remand the case to the UNDT.

18. Nwuke submits that the UNDT erred in fact in finding that he submitted his application under ST/SGB/2008/5 entitled "Prohibition of Discrimination, Harassment, including Sexual Harassment, and Abuse of Authority" and that his application was therefore irreceivable. He further submits that the UNDT erred in law in finding that it could not compel the Organization to investigate his complaints against ECA's Senior Management. The UNDT in fact recently held in Abboud that an "applicant ha[s] a right under his contract of employment to have his request for an investigation fairly and competently investigated".¹

Secretary-General's Answer

19.

Considerations

decision to undertake, or not to undertake, an investigation cannot be subject to judicial review. Whether or not the UNDT may review such a decision depends on whether it falls into the UNDT's jurisdiction pursuant to Article 2(1) of the UNDT Statute.

27. Article 2(1) of the UNDT Statute stipulates that the UNDT "shall be competent to hear and pass judgment on an application filed by an individual against ... (a) ... an

Management shall decide whether disciplinary or other appropriate action should be initiated against the person who made the complaint or report.

Paragraph 5.20, which is particularly relevant in the present case, finally establishes that “[w]here an aggrieved individual or alleged offender has grounds to believe that the procedure followed in respect of the allegation)5(ci712 6(h)al)ad(enmini6())6(hrq 1v)5(cid2 -15owed i5(c

39. Of course, and as stated above, under paragraph 5.20 of ST/SGB/2008/5, a staff member who requests an investigation or makes accusations able to lead to disciplinary proceedings can also be held responsible for his or her application, for instance when acting in a frivolous, negligent, abusive, or mischievous way, causing unnecessary administrative action or even prejudice.

40. But serious and reasonable accusations and requests for investigations constitute important instruments to improve administrative procedures and to ensure that day-to-day actions by the Administration are in compliance with the Organization's law. The Administration must decide within its discretion whether or not to conduct investigations. The Administration may be held accountable if it fails to comply with the principles and laws governing the Organi5(a)-uitabl nswlstaffinv 2(o)407(n)41.046A <</o <<uie((ci)--2(ci)-)-2tcP159(ls)-6(cou)7(

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2010-UNAT-099

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