
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2015/057

Judgment No.: UNDT/2016/064

Date: 31 May 2016

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye Berko

KETO

v.

SECRETARY GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Abbé Jolles

Counsel for the Respondent:
Steven Dietrich, ALS/OHRM
Alister Cumming, ALS/OHRM

Introduction

1. The Applicant is an Information Technology Assistant with the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA). In his Application filed on 17 May 2015, he is contesting a 18 March 2015 decision which reassigned him to West Barr in the Central African Republic notwithstanding a pending motion.

2. The Respondent filed a Reply on 19 June 2015. In the said Reply, he submitted that the Application is not receivable.

3. On 8 September 2015, the Tribunal issued Order No. 273 (NBI/2015) notifying the Parties that pursuant to art. 16.1 of the Dispute Tribunal's Rules of Procedure an oral hearing was not necessary to determine the preliminary objection.

8. On 31 July 2014, the Chief, GITTS sent an inter-office memorandum to the Director of Mission Support (DMS) seeking his approval to assign the Applicant to Bouar. The DMS signed the memorandum on the same day. The next day, August 1, 2014, the Applicant's First

Applicant should have submitted a request for management evaluation within 60 days of 1 August 2014, that is, no later than 29 September 2014. However, he did not seek management evaluation until 29 January 2015. Accordingly, the Dispute Tribunal lacks jurisdiction to hear this aspect of the Applicant's appeal.

b.

b. The 18 March decision was the first written notice that a decision had been made to transfer him notwithstanding his pending promotion. He contested the decision within 30 days of the 18 March notice

submitted by his Counsel on 14 April 2015. Both requests referred to the reassignment to Bouar from Bangui. In the 23 January 2015 letter to MEU, the Applicant wrote:

In addition to the above, the Chief of the CITS section makes arbitrary decisions to

establish the date on which the staff member knew or reasonably should have known of the implied decision?

23. It is well established that on 1 August 2014, the Applicant was sent a copy of the interoffice memorandum of the Chief of GITTS seeking the approval of the DMS to reassign the Applicant and other to Bouar. The memorandum made a provision for the DMS to sign on it either granting the sought approval or denying it. The DMS put his signature on the request without indicating whether the approval was being granted or denied.

24. Having argued that his receipt of the interoffice memorandum on 1 August 2014 was sufficient to establish that he should have known of the implied decision, the Applicant argued that the DMS's failure to indicate whether the approval was being granted or denied constituted a breach of the Applicant's right to a fair trial.

Judgment

27. The Application is refused for being not receivable



(Signed)