

Case No.: UNDT/NBI/2024/021
Judgment No.: UNDT/2024/076
Date: 10 October 2024

Introduction

1. On 31 July 2024, the Applicant, a former P-4 Political Affairs Officer at the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (“MINUSCA”), filed an application regarding:
 - a. The refusal to expunge a disciplinary sanction letter dated 2 November 2021 from his human resources records (Issue 1);

5. On 30 March 2021, the Applicant filed a motion seeking leave to withdraw Case No. UNDT/NBI/2019/139/R1. The motion was granted by Order No. 070 (NBI/2024).

6. On 22 April 2021, a disciplinary process was initiated against the Applicant based on allegations of misconduct. The Applicant provided his comments in response to the allegations on 17 August 2021. On 23 and 26 August 2021, the Applicant submitted documents in support of his comments.

7. On 2 November 2021, the Assistant Secretary-General for Human Resources conveyed the decision of the Under-Secretary-General for Department of Management Strategy, Policy and Compliance (“USG/DMSPC”) with respect to

9. On 12 April 2022, the Applicant filed an application to contest the Secretary-General's decision to withhold his final pay and pension entitlement since 2 November 2021. On 30 September 2022, the Tribunal issued Judgment No. UNDT/2022/096 which rejected the application as irreceivable. The Applicant did not appeal the Judgment.

10. On 23 and 29 January 2024 and 26 February 2024, the Applicant requested management evaluation of the Issues described in para. 1(a) – (d) above.

11. On 28 February 2024, the Chief of the Management Advice and Evaluation Section ("MAES") found that the Applicant's Issues pertain to matters that occurred circa 2021 and were not receivable because they were outside MAES's scope of review, were moot, or time-barred.

12. On 31 March 2024, the Applicant filed this application mentioned.

13. On 16 July 2024 the Respondent filed a motion requesting the Tribunal to determine the receivability of the application as a preliminary matter under art.19 of its Rules of Procedure, and to suspend the Respondent's deadline of 2 August 2024 to file a reply to the application pending the Dispute Tribunal's determination on the motion.

14. By Order No. 98 (NBI/2024) dated 31 July 2024, the Duty Judge allowed the Applicant to file a response to the motion by Friday, 9 August 2024, and extended

18. The Respondent filed his closing submission as directed. The Applicant filed his closing submission on Sunday, 15 September 2024, without justifying his lateness.

Parties' submissions

terms and conditions of appointment. The Applicant's mere disagreement and dissatisfaction with the letter's contents do not counter its lawful placement.

b. The case file shows that the Applicant did not contest the decision of 2 November 2021, to impose the disciplinary sanction on him before the UNDT within 90 calendar days, and the time limits for contesting this matter have been strictly enforced. By Order No. 10 (NBI/2022) of 2 February 2022, the Dispute Tribunal dismissed his request for more time to contest the disciplinary sanction for lack of exceptional circumstances. By Order No. 452 (2022) of 21 April 2022, UNAT rejected his appeal of Order No. 10 (NBI/2022).

c. Should the Tribunal find Issue 1 receivable, it lacks merit. The Organization complied with the mandatory requirement to place the disciplinary sanction letter on the Applicant's human resources record and there is no basis for the Applicant to request its removal. The Organization's decision to sanction him was legal, reasonable, proportionate, and procedurally correct: the disciplinary measure was based on facts established by clear and convincing evidence, the established facts amounted to misconduct, the sanction was proportionate to the misconduct and the Applicant's due process rights were respected.

Issue 2

d. Issue 2 is not receivable. The Applicant had 60 calendar days from when he received notice of his disciplinary sanction on 2 November 2021, to submit a request for management evaluation regarding the alleged breach of the Agreement. The Applicant did not submit his request until over two years later. Article 8.3 of the UNDT Statute states that deadlines for management evaluation cannot be suspended or waived. Contrary to the Applicant's assertion, there is nothing in the Agreement that allows for contestation within three years from its last provision's effective date, 31 December 2021.

e. Should Issue 2 be receivable, it lacks merit. The Applicant's assertions that the Agreement represents a grave injustice and that the Organization

violated the Agreement are unpersuasive. The case file shows that the Organization implemented its undertakings in art. 2 of the Agreement “to renew the Releasor’s fixed-term appointment until 31 December 2021 and raise a personnel action notification reflecting the same”. The Applicant’s reliance on

The UNDT has no jurisdiction to perform its own investigation into the allegations.

m. Should the scope of Issue 4 extend beyond Issues 1 to 3 to concern “a pattern of behavior tracing back to 2011”, his generalized complaint identifies no reviewable administrative decision and would have been subject to the regulatory framework under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment and abuse of authority) (superseded by ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority)), or ST/AI/2017/1 and the 60-day deadline for requesting management evaluation of any alleged decisions regarding violations of that framework.

n. The case file shows that UNDT and UNAT have not found his alleged pattern of abuse of 12 years receivable. For matters known to the Applicant for more than three years, art. 8.4 of the UNDT Statute is an absolute restriction on judicial discretion and the UNDT cannot waive the time limit

30. This claim is also receivable. Indeed, while there is an administrative decision impacting on the Applicant's work relationship, the management evaluation of the decision is mandatory to assess the decision itself, not to verify if the decision entails, as a different and side effect, an alleged breach of an agreement.

31. The claim, however, lacks merit.

32. The Tribunal is aware of the contentions in the case *Tosi* 2019-UNAT-946, recalled by the Applicant, where a settlement agreement was breached when the appointment of the staff member was not renewed and the Tribunal was called to assess the respect of obligations of the implementation of the agreement "in its spirit" by the Administration. (*Tosi* UNDT/2019/003 found that the Administration had acted in bad faith in violation of the intent of the settlement agreement and consequently rescinded the non-renewal decision and awarded him compensation.)

33. The Applicant's reliance on the *Tosi* case however, is misplaced because, apart from any consideration of the outcome of the appeal judgment, it concerns an unimplemented settlement agreement, which is not the situation in the case at hand; here the Organization implemented its undertakings in art. 2 of the Agreement to renew the Applicant's fixed-term appointment until 31 December 2021, and raise a personnel action notification reflecting the same.

34. Moreover, nothing in the Agreement precluded supervening events, such as the Organization finding that the Applicant had committed misconduct and imposing a disciplinary sanction.

35. The relevance given by the Administration to the supervening event is therefore lawful, as the Agreement did not include any clause preventing the Administration to consider, for disciplinary reasons, facts which had already occurred at the time of the Agreement.

Issue 3

36. The third claim is related to the alleged failure by the Administration to pay salary, compensation, repatriation grant, reinstallation grant.

37. This issue is not receivable.

38. It is worth noting that on 12 April 2022, the Applicant already had filed an application to contest the Secretary-General's decision to withhold his final pay and pension entitlement since 2 November 2021.

39. By Judgment No. UNDT/2022/096 of 30 September 2022, the Dispute Tribunal dismissed his request for review of the withholding of his final pay and all his entitlements with compensation since 2 November 2021 for lack of a management evaluation request. The said judgment was not appealed.

40. Although the Applicant does not demonstrate that the allowances requested in this case are different from those already concerned by the previous dispute, it results from the recalled judgment that on 20 April 2022, the United Nations Regional Service Centre in Entebbe released the Applicant's final pay without the repatriation grant which was being processed when he filed the application.

10 (NBI/2022) and UNAT Order No. 452 (2022)). If it concerns “a pattern of behavior tracing back to 2011”, even recalling in the closing submissions an unsubstantiated alleged suspension of a generic life insurance in an undetailed period and a generic and unsubstantiated violation of the Administration’s duty of care and the United Nations disability strategy, the complaint is inadmissible as it identifies no reviewable administrative decision.

Conclusion

45. In light of the foregoing, the Tribunal rejects the application in its entirety.

(Signed)

Judge Francesco Buffa

Dated this 10th day of October 2024

Entered in the Register on this 10th day of October 2024

(Signed)

Wanda L. Carter, Registrar, Nairobi