



UNITED NATIONS
RIBUNouadio:

Respondent

Secretary

Application

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... On 16 February 2012, [Mr. Kouadio] sent a letter to the UNDP Deputy Country Director (Operations) requesting an indemnity.

... On 19 April 2012, [Mr. Kouadio] sent another letter to the UNDP Resident Representative in Côte d'Ivoire, again with a view to obtaining an indemnity.

... On 31 May 2012, [Mr. Kouadio] filed a request for informal settlement with the Ombudsman.

... On 6 February 2013, [Mr. Kouadio] filed an application with the [Dispute] Tribunal contesting the decision, communicated to him orally on 9 May 2011, not to renew his fixed-term appointment beyond 30 June 2011 and to abolish his post.

... The Respondent [...] submitted a reply on 9 August 2013 stating that the application was not receivable because no request for a management evaluation of the contested decision had been submitted to the Secretary-General or the UNDP Administrator, as required under rule 11.2(a) of the Staff Rules. In addition, the application was not receivable

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2015-UNAT-558

has held that it does not have the power to conduct *de novo* hearings on appeal. Further, it is not enough for Mr. Kouadio to merely complain on appeal that he should have been awarded compensation. The UNDT did not err in failing to award compensation as the UNDT did not make any findings that the Administration had breached a procedural right of a fundamental nature, or that Mr. Kouadio had suffered direct harm as a result. As such, there was no legal basis for the UNDT to award damages and Mr. Kouadio has not established any error on the part of the UNDT. Lastly, other than bare assertions, Mr. Kouadio has not proffered any evidence to support his claims for compensable pecuniary and non-pecuniary harm; his claims merely repeat his submissions before the UNDT and reflect his own opinion. As such, his cross-appeal must fail.

12. The Secretary-General requests that the Appeals Tribunal vacate the Judgment and dismiss the cross-appeal in its entirety.

Considerations

13. Staff Rule 11.2(a) states, in relevant part, that: “[a] staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, [...] shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision”.

14. Staff Rule 11.2(c) reads, in part: “A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.”

15. Moreover, Article 8(1)(c) of the Statute of the UNDT establishes as a prerequisite that an application shall be receivable if: “[a]n applicant has previously submitted the contested administrative decision for management evaluation, where required”.

16. Article 8(3) of the UNDT Statute provides:

The Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases. *The Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.*⁸

⁸ Emphasis added.

17. It is settled case law that requesting management evaluation is a mandatory first step in the appeal process. The Appeals Tribunal has noted many times that the requirement of management evaluation assures that there is an opportunity to quickly resolve a staff member's complaint or dispute without the need for judicial intervention.⁹

18. In the current matter, little turns on the actual date that Mr. Kouadio may consider to have been properly notified of the abolition of his post. Regardless of whether time may be considered to have begun to run as of 9 May 2011, the date on which he acknowledged in his UNDT application that he had been informed, 16 June 2011, the date on which he wrote to the UNDP Resident Representative in Côte d'Ivoire requesting a termination indemnity, and therein acknowledging that he had been informed his post would be abolished, or even 30 June 2011, the date on which he separated and thus surely knew that an administrative decision had been taken to his detriment, the fact remains that at no point can it be said that he had requested management evaluation.

19. Furthermore, Article 8(4) of the UNDT Statute prohibits that Tribunal from considering any application brought to it three years after the issuance of the administrative decision that a potential applicant is seeking to challenge. In this regard, we agree with the Secretary-General that insofar as the UNDT purported to act pursuant to Article 36 of the UNDT Rules, Article 36 of the UNDT Rules does

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Dated this 2nd day of July 2015 in Geneva, Switzerland.

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Simón

Entered in the Register on this 20th day of August 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar