



UNITED NATIONS DISPUTE TRIBUNAL

Original: English

Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pelé Fomété

ADHOLLA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT ON APPLICATION FOR
SUSPENSION OF ACTION**

Case No. UNDT/NBI/2011/090

Judgment No.

5. The Applicant received the IOM on 9 November 2011. On 14 November she wrote to Mr. Noun Bandyandora, her First Reporting Officer and at the time Officer-in-Charge of the Documents Control Unit, requesting clarification of the retention panel's evaluation. On 15 November 2011, the Applicant was sent an email by Ms. Sarah Kilemi, Chief of the Division of Administrative Services Section (DASS), advising her as follows:

I would like to refer you to the internal policy and procedures on how to deal with disagreement with the outcome of the retention panel. You as the [staff member], have the right to meet with members of the retention panel in order to be informed on the process used to evaluate you. Thereafter if you are still not satisfied, the matter is referred to administration in order for us to have it submitted to the independent retention appeal panel.

6. Following this procedure, on 23 November 2011 a meeting was convened with the LSS Retention Panel to discuss how the Applicant was evaluated. During that meeting the panel were not able to provide the Applicant with her ratings as they did not have the relevant documents to hand. A further meeting took place on 30 November 2011 with the Chief of Human Resources, the Chief of LSS and the Applicant so that the ratings could be transmitted to her.

7. The Applicant was clearly not satisfied with the outcome of these meetings because on 14 December 2011, the Retention Appeal Panel (RAP) was convened to consider her case. The RAP informed the Applicant of its decision to uphold the separation orally, on 22 December 2011.

8. The Applicant filed this Application for Suspension of Action on 29 December 2011.

The Applicant's submissions

9. The Applicant's primary contentions may be summarized as follows:

Prima facie unlawfulness

- (a) The Applicant's evaluation was not completed in the spirit of the

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2011 and received an oral response on 22 December. This ties in with the evidence filed which indicates that on 14 December the Applicant met with the RAP in order to appeal the decision, and on 22 December she was informed of the outcome of that appeal. The question then is whether the Tribunal is able to treat the Applicant's appeal to the RAP as a "request for management evaluation" within the meaning of the Staff Rules and the Statute of the Tribunal.

What is a management evaluation?

17. It is noteworthy that there is nothing in the Staff Rules which actually defines a "management evaluation". The fact that within the Secretariat there exists a special office—the Management Evaluation Unit (MEU)—dedicated to considering "requests for management evaluation" is not mentioned. Indeed,

ICTR where he was employed, asking for a second look at the impugned decision.¹

19. Can the same conclusion be drawn here? Regrettably for the Applicant, it cannot. In *Gebre*, the applicant wrote to the lawful agent of the Secretary-General, the Registrar, who was well aware from the correspondence that the applicant was requesting an administrative review.² In the present case, in contrast, the Applicant “appealed” to the RAP in pursuance of the internal review procedure she was advised to follow by the Chief of DASS.

20. The Applicant was aware of the existence of the Dispute Tribunal because she filed an Application on the prescribed form on 29 December 2011. She successfully sent it to the Dispute Tribunal. She must, therefore, have made some inquiry into the procedures applicable to the Tribunal, even if only in a cursory manner. Since the Statute and Rules of the Tribunal are set out on its website, it can be presumed that the Applicant had access to them.

21. In the circumstances, the Tribunal cannot repair the Applicant’s lack of diligence in ascertaining that a request for management evaluation was required prior to—or even concurrent with—the filing of an application for suspension of action under article 13 of the Rules of the Procedure of the Tribunal. Despite its lack of detail, article 11.2 of the Staff Rules does make it clear that a staff member must write to the Secretary-General (or, as in the case of *Gebre*, his lawful agent), requesting management evaluation of the administrative decision. An appeal to an internal review committee such as the RAP does not amount to such a written request.

22. In the absence of a request for management evaluation the Tribunal does not have the jurisdiction to consider the present Application under article 2.2. of its Statute and article 13 of its Rules of Procedure. The Application is not receivable.

¹ *Gebre* UNDT/2011/140, paragraphs 21 and 26.

² *Id.* paragraph 23.

23. In view of the Tribunal's findings on the issue of receivability, it is not necessary to examine the issues of *prima facie* unlawfulness, urgency, and irreparable damage.

Conclusion

24. The Application is dismissed.

(Signed)

Judge Vinod Boolell

Dated this 4th day of January 2012

Entered in the Register on this Dated this 4th day of January 2012

(Signed)

Jean-Pelé Fomété, Registrar, Nairobi