



Facts and Procedural History

1. The contested decision in this case concerns the refusal by the Respondent to disclose to the Applicant an unredacted copy of his Performance Appraisal Rebuttal Panel Report, with the names and signatures of the rebuttal panel members who had, on 19 July 2011, considered his rebuttal statement challenging his performance rating for 2010/2011. On 29 July 2011, the Applicant was informed that the Executive Director of the United Nations Office for Project Services (UNOPS) had decided to uphold his overall pe-2(U)18(N)rmanc53()-282(r)-3(t)-20(i Tm [()] TJ

Dispute Tribunal to be necessary for a fair and expeditious disposal of the proceedings.

3. A party wishing to submit evidence that is in the possession of the opposing party or of any other entity may, in the initial application or at any stage of the proceedings, request the Dispute Tribunal to order the production of the evidence.

Article 19 Case management

The Dispute Tribunal may at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties.

8. As would be evident from these provisions, whether the UNDT makes an order for disclosure on its own motion or on request by a party, such a request, as it applies to an applicant has to be made either at the time an application is filed or at any stage thereafter

12. The record shows that on 24 February 2015, the Applicant made a written request to the Respondent for a copy of his Performance Appraisal Rebuttal Report. The Respondent responded to the Applicant's request on 4 March 2015 by providing him with a *redacted* copy of the Report. It is immediately upon receipt of the redacted Report that the Applicant filed his motion to compel disclosure of an unredacted copy of the same Report.

13. It is the Applicant's case that the reason for the delay of over three years is that shortly prior to the request he received information that caused him to believe that something untoward had occurred during the discussion and deliberations of the Rebuttal Panel in July 2011.

14. Nothing was heard from the Applicant until 18 November 2015, when he filed the present Application identifying the contested decision as UNOPS' failure

him of the outcome of the process and UNOPS' consequential decision. The

December 2015 to which he said he was awaiting a response. He requested “a waiver of the deadline to respond to” Order No. 414 (NBI/2016) “until Order No. 392 (NBI/2015) is addressed by the Tribunal”.

25. On 22 August 2016, the Tribunal issued Order No. 418 (NBI/2016) exceptionally allowing waiver of the deadline sought by the Applicant and granted him additional time to comply with Order No. 414 (NBI/2016).

26. On the same day, the Applicant filed his submissions in compliance with Order No. 414 (NBI/2016).

27. The Tribunal will now deal with the Applicant’s initial filing on 5 March 2015; and the receivability, and if appropriate, the merits of the Application filed on 18 November 2015. The Tribunal will also decide on the Applicant’s motion to amend the error in Order No. 392 (NBI/2015).

Considerations

28. The Tribunal has identified the following issues to be considered in order to determine if the application is receivable and, if it is, to determine the merits of the claim:

- (a) What is the contested decision?
- (b) If it is a decision which was required to be subject to a request for management evaluation did the Applicant comply with this mandatory requirement?
- (c) If the Applicant did not request management evaluation are there any circumstances under which the Tribunal may lawfully consider the merits of the claim?
- (d) If the claim is not receivable, what, if any, is the appropriate Order for the Tribunal to make in relation to the Applicant’s motion to correct Order No. 392 (NBI/2015)?

29. The Tribunal finds that the contested decision is the refusal of the Respondent to provide him with an unredacted copy of Rebuttal Panel's Report. Leaving aside the question of why the Applicant submitted the request to the Respondent more than three years after his employment with UNOPS had ended, and whether there is any merit to his argument that he came to the Tribunal as soon as he became aware of irregular conduct by the Respondent in the Rebuttal process, the Tribunal is satisfied that the Applicant was required to submit a request for management evaluation. He did not do so.

30. Staff rules 11.2(a) and (c) and 11.4¹ require a staff member to first approach the Secretary-General for the resolution of a dispute within sixty (60) days of being notified of the impugned decision. That is the threshold of receivability before the Management Evaluation Unit.

31. The threshold for receivability before this Tribunal is governed by articles 7 and 35 of the Rules of Procedure. Art. 7.1 provides (emphasis added):

Applications shall be submitted to the Dispute Tribunal through the Registrar within:

(a) *90 calendar days of the receipt by the applicant of the management evaluation, as appropriate;*

(b) *90 calendar days of the relevant deadline for the communication of a response to a management evaluation, namely, 30 calendar days for disputes arising at Headquarters and 45 calendar days for disputes arising at other offices; or*

(c) 90 calendar days of the receipt by the applicant of the administrative decision in cases where a management evaluation of the contested decision is not required.

32. Subject to art. 8.3 of the Statute, art. 35 further affords the Tribunal (President, or judge or panel hearing a case) the authority to "shorten or extend a time limit fixed by the rules of procedure or waive any rule when the interests of justice so require".

33. Under art. 7.5 of its Rules of Procedure, the Tribunal has power to waive time limits.

¹ ST/SGB/2014/1 (Staff Rules and Staff Regulations of the United Nations).

34. It is settled law that there is no power to waive the deadlines for requesting management evaluation.² Further, where a request for management evaluation is a mandatory first step in commencing proceedings, the Tribunal has no power to dispense with this requirement. As a former staff member, the Applicant may bring a claim before the Tribunal but since he has not provided evidence that he requested management evaluation of his complaint,

Judgment

39. The claim is not receivable and is dismissed in its entirety.

(Signed)

Judge Goolam Meeran

Dated this 15th day of September 2016

Entered in the Register on this 15th day of September 2016

(Signed)

Abena Kwakye-