
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2021/015
Judgment No.: UNDT/2021/072
Date: 22 June 2021
Original: English

Before: Judge Joelle Adda
Registry: New York
Registrar: Nerea Suero Fontecha

POPKINS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT
ON RECEIVABILITY

Counsel for Applicant:
Rishi Gulati

Counsel for Respondent:
Alister Cumming, UNICEF
Matthias Schuster, UNICEF

claims. On

20. This case was transferred to the New York Registry on 1 April 2021.
21. On 18 April 2021, the Applicant filed an additional submission in these proceedings in which she reiterated the contentions laid out in the application and added references to the 20 August and 11 December 2020 decisions.
22. On 14 May 2021, at the Tribunal direction, the Respondent responded to the 23 March 2020 and 18 April 2021 submissions stating that the application was not receivable. On 21 May 2021, the Applicant responded, restating her position that the application is receivable.
23. Additional submissions on the merits were submitted by the

28. In 23 March 2020 and 18 April 2021 submissions, she does not address the Respondent challenges to the receivability of the application but focuses on the alleged delays in the handling of her complaint and challenges 20 August 2020 and 2 February 2021 reviews of her complaint.

29. In the Appeals Tribunal jurisprudence, an administrative decision capable of judicial review has most recently been defined as administrative nature taken by the administration involving the exercise of a power or the performance of a function in terms of a statutory instrument, which adversely affects the rights of another and produces direct legal consequences (*Lloret Alcañiz et al.* 2018-UNAT-840, para. 61).

30. In the present case, the Applicant unilaterally decided to submit her resignation as is evidenced by the 22 March 2019 letter. The Tribunal notes that in resignation letter and in the previous communications between her legal representative she refers to harassment and abuse of authority as being the reason for her resignation.

31. Under the Appeals Tribunal jurisprudence, a staff member has a contractual entitlement to request that his or her allegations of harassment be addressed. To avail himself or herself of such entitlement, the staff member must follow the applicable mechanism for addressing harassment or abuse of authority complaints. The Appeals Tribunal recalled that the investigation of such allegations is not the preserve of the Dispute Tribunal given the specific nature of the judicial review reserved to it under its Statute, which is limited to reviewing how management responded, or not, to a complaint of harassment (*Luvai* 2014-UNAT-417, para. 62-64).

32. The Appeals Tribunal has further stated that the mechanism applicable to the review of complaints of harassment or abuse of authority, together with the jurisdiction vested in both the Dispute and Appeals Tribunal provide

and procedural protection for both complainants and alleged offenders which must be *Luvai*, para. 65).

33. It follows that, in this case, the Tribunal cannot review the merits of the allegations of harassment or abuse of authority. Its jurisdiction is limited to the review of whether her resignation was caused by an action or inaction of Administration which was in violation of the applicable legal framework.

34. The record shows that the Applicant filed her complaint of harassment on 9 March 2019 and submitted her resignation 14 days later.

35. Secs. 5.13-5.15 of CF/EXD/2012-007 of 6 April 2018 (Prohibition of discrimination, harassment, sexual harassment and abuse of authority) provide that upon receipt of a complaint of harassment, OIAI conducts a preliminary assessment of the complaint and discusses with the complainant the benefits of informal resolution. After interviewing the complainant, OIAI decides whether the complaint is credible and merits a comprehensive review or whether it is unfounded.

36. The Tribunal finds that it would obviously be unreasonable to expect OIAI to have completed this procedure within the mere 14 days that elapsed between the filing

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caused by an action or inaction of the Administration but was her unilateral decision. Accordingly, this aspect of the application does not concern an administrative decision capable of judicial review and is not receivable.

Failure to address the Applicant's complaint of harassment and right not to be harassed at work.

38. The Applicant claims that UNICEF failed to address her complaint in breach of the applicable framework and her legitimate expectations. She avers that this

identification of any challengeable administrative decision, this aspect of the application is also not receivable (in line herewith, see the Appeals Tribunal in, for instance, *Planas* 2010-UNAT-049 and *Haydar* 2018-UNAT-821).

Additional submissions

45. From the outset, the Tribunal notes that in Order No. 69 (GVA/2019) of 23 September 2019, it allowed the Applicant to submit, after the application, contained [in the OIAI . Therefore, the Tribunal will review these additional submissions as presented in support of the original application.

46. , she reiterates the grounds of appeal laid out in the application. She adds a challenge to lay [in the handling of the .

47. The Applicant claims by allowing several months to elapse from the date of the original claim without a resolution.

48. In the 18 April 2021 additional submissions, the Applicant further reiterates the grounds of appeal laid out in the application. She also contests the 20 August 2020 and 21 December 2020 decisions not to pursue her complaint.

49. The Respondent objects to the receivability of this submission given that it concerns new and separate administrative decisions not contained in the original application.

50. He further states that UNICEF is not obligated to carry out an investigation when it receives a comp framework.

