



**Judgment No. 2020-UNAT-993**

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**Counsel for Mr. Ruyffelaere: Self-represented**

**Counsel for Secretary-General: Isavella Vasilogeorgi**

**JUDGE DIMITRIOS RAIKOS, PRESIDING.**

1. Mr. Jean Gael Ruyffelaere filed an application before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) contesting the administrative decision not to investigate his complaint of harassment and abuse of authority against his second reporting officer. The UNDT dismissed his application as not receivable on grounds that he had not timely filed a request for management evaluation. Mr. Ruyffelaere appeals to the United Nations Appeals Tribunal (Appeals Tribunal). On appeal, we find the UNDT erred in dismissing the application as not receivable and we therefore remand the case to the UNDT to be determined on its merits.

**Facts and Procedure**

2. On 15 September 2014, Mr. Ruyffelaere, a Senior Medical Officer in the Medical Services Division, Department of Management (DM) in New York, submitted a complaint under Secretary-General's Bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) to the Office of Internal Oversight Services (OIOS). Mr. Ruyffelaere alleged harassment and abuse of authority against the Medical Director. OIOS referred the matter to the Under-Secretary-General of DM (USG/DM).

3. On 5 July 2015, Mr. Ruyffelaere had a telephone conversation with the then Director of the Office of the USG/DM (Director of OUSG/DM) and discussed *inter alia* various potential resolutions regarding his complaint. On 19 November 2015, in a meeting in New York, the Director of OUSG/DM verbally informed Mr. Ruyffelaere that he reviewed the

5. On 12 July 2017, Mr. Ruyffelaere received an e-mail from the Director of OUSG/DM, which stated that the incidents Mr. Ruyffelaere had described in his complaint had not provided sufficient grounds to warrant a formal fact-finding investigation.

6. On 20 July 2017, Mr. Ruyffelaere submitted an amended request for management evaluation which included the Director of OUSG/DM's e-mail of 12 July 2017.

7. On 23 August 2017, Mr. Ruyffelaere filed an application before the UNDT.

8. On 14 May 2019, the UNDT issued Judgment on Receivability, Judgment No. UNDT/NY/2019/084 and dismissed Mr. Ruyffelaere's application as not receivable on the grounds that he had not timely submitted a request for management evaluation. The UNDT found that he had not submitted a request within 60 days of receipt of notification of the contested decision or the date on which he first came to know of it. The Dispute Tribunal determined that the Director of OUSG/DM had orally informed Mr. Ruyffelaere on 19 November 2015 that a decision had been taken not to investigate his complaint, but Mr. Ruyffelaere did not accept this as valid notification because he did not receive it from the USG/DM, who was the responsible official seized of his complaint. The Dispute Tribunal further held that the 12 July 2017 decision contained in the e-mail from the Director of OUSG/DM to Mr. Ruyffelaere was materially the same as what he had been told in November 2015 and was therefore just a reiteration of the earlier decision. A staff member's request for a reiteration of an administrative decision does not reset the time limit for contesting the decision. Thus, Mr. Ruyffelaere should have filed a request for management evaluation within 60 days from the Director of OUSG/DM's oral notification, i.e. by 18 January 2016. Instead, Mr. Ruyffelaere submitted a request on 25 April 2017, well beyond this time limit.

9. On 11 July 2019, Mr. Ruyffelaere filed his appeal and on 1 August 2019, the Secretary-General filed his answer.

### **Submissions**

#### **Mr. Ruyffelaere's Appeal**

10. Mr. Ruyffelaere requests that the Appeals Tribunal remand his case to the UNDT so it can be determined on the merits. He argues that the UNDT erred in law as it should have determined the main issue was whether or not the responsible official should have reviewed

his complaint and informed Mr. Ruyffelaere of his decision. The UNDT, thus, should have reviewed whether the responsible official complied with his duty under paragraph 5.18 of ST/SGB/2008/5,

management evaluation to review his own decision. The lack of response from the MEU is telling.

**The Secretary-General's Answer**

13. The Secretary-General requests the Appeals Tribunal to affirm the Judgment and dismiss the appeal in its entirety. In support, the Secretary-General argues that the UNDT correctly dismissed the application as not receivable. The time limit for requesting management evaluation against an administrative decision starts to run once a staff member has been notified of the decision in clear terms. Mr. Ruyffelaere was info(n no)-23.5 (e)5g(o)-3 (r)-0 N9.8 (r )]TJ

provide any obligation for the responsible official to personally notify the staff member of the outcome of an investigation or of one's complaint.

### **Considerations**

16. The issue before this Tribunal is whether the Dispute Tribunal correctly concluded that Mr. Ruyffelaere's application was not receivable *ratione materiae* on the ground that he had failed to submit a timely request for management evaluation. This Tribunal determines that the UNDT's conclusion is not correct.

17. Staff Rule 11.2(c) provides that "[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". This applies to both explicit and implied administrative decisions.

18. With an implied administrative decision, the Dispute Tribunal must determine the date on which the staff member knew or reasonably should have known of the decision he or she contests. Stated another way, the Dispute Tribunal must determine the date of the implied decision based on objective elements that both parties (Administration and staff member) can accurately determine.<sup>1</sup>

19. In the case at hand, the Dispute Tribunal determined, based on oral testimony, that the 19 November 2015 discussion between Mr. Ruyffelaere and the Director of OUSG/DM constituted clear oral notification of the challenged administrative decision and therefore Mr. Ruyffelaere ought to h

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**Judgment**

23. The Appeals Tribunal grants the app