

Introduction

1. By an application filed on 5 January 2012, the Applicant, a former staff member of the United Nations Office on Drugs and Crime (“UNODC”), challenges the decision of the Assistant Secretary-General for Human Resources Management not to conduct a fact-finding investigation following his report of prohibited conduct.

2. He asks the Tribunal to rescind the contested decision and to order that a fact-finding investigation be conducted. He also seeks compensation for the moral injury he suffered.

Facts

3. The Applicant, an Austrian national, joined UNODC in Vienna in 2002.

requests regarding the renewal of his appointment beyond its expiry on 31 December 2011.

6. By an email of 29 November 2011, the Officer-in-Charge of DTA informed the Applicant of the decision not to extend his appointment beyond 31 December 2011.

7. On 14 December 2011, the Assistant Secretary-General for Human Resources Management responded to the Applicant's complaint of 28 November that, in her view, there were not sufficient grounds to warrant a formal fact-finding investigation given that the Applicant had produced no evidence of his allegation concerning the UNODC Executive Director and that he had been duly notified of the decision not to renew his appointment.

8. On 5 January 2012, the Applicant filed with the Tribunal the application which forms the subject of the present Judgment.

9. A directions hearing was held on 18 April 2012, which the Applicant and Counsel for the Respondent attended by videoconference.

Parties' submissions

10. The Applicant's principal contentions are:

a. Staff rule 11.2 provides that "[a] staff member wishing to formally contest an administrative decision ... shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision". Since this provision only refers to staff members, it is to be inferred that former staff members are not required to undergo management evaluation prior to bringing their claims before the Tribunal;

b.

c. The UNODC Executive Director contributed to the further deterioration of a hostile work environment and his behaviour constitutes harassment and abuse of authority.

11. The Respondent's principal contentions are:

It results from staff rule 11.2 and article 8 of the Statute of the Tribunal that a staff member who wishes to contest an administrative decision must, as a first step, submit the contested decision for management evaluation. As the Applicant failed to request a management evaluation of the contested decision in this case, his application is not receivable.

Consideration

12. This case raises the issue of whether the procedural requirement of a management evaluation applies to a former staff member who wishes to contest an administrative decision.

13. According to article 2.1 of the Tribunal's Statute,

15. Article 8.1 further provides:

An application shall be receivable if ...

An applicant has previously submitted the contested administrative decision for management evaluation, where required ...

16. It follows from the above provisions that, for the purpose of admissibility, the procedural requirement of submission for management evaluation equally applies to staff members and former staff members. Therefore, under these provisions, irrespective of whether an applicant is a current or a former staff member of the United Nations, he or she must request a management evaluation prior to filing his or her application with the Dispute Tribunal.

17. Staff rule 11.2(a), for its part, states:

A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General

21. Therefore, even assuming that staff rule 11.2(a), insofar as it is silent on whether a former staff member must request a management evaluation prior to filing an application with the Tribunal, contradicts the provisions of the Tribunal's Statute, the Tribunal is to assess the admissibility of the application only in light of its own Statute.

22. It is settled case law of both the Dispute Tribunal (see, _____, UNDT/2010/203, _____ et al. UNDT/2010/206, _____ UNDT/2010/208) and the Appeals Tribunal (see, _____, _____ 2010-UNAT-035 and 2010-UNAT-049) that requesting a management evaluation is a mandatory first step in the appeal process.

23. Where the Staff Rules provide for exemptions from the requirement to request a management evaluation, these exemptions are related to certain types of administrative decisions and not to the status of the concerned individual. Staff rule 11.2(b) thus states:

A staff member wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General, or of a decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following the completion of a disciplinary process is not required to request a management evaluation.

24. In the case at hand, the Applicant does not challenge an administrative decision for which he is exempted from the requirement to request a management evaluation.

25. It follows that the decision not to conduct a fact-finding investigation is not properly before the Tribunal and the application must accordingly be rejected as irreceivable.

Conclusion

26. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

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Judge Thomas Laker

Dated this 10th day of May 2012

Entered in the Register on this 10th day of May 2012

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René M. Vargas M., Registrar, Geneva