



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2010/095

Judgement No.: UNDT/2011/087

Date: 20 May 2011

Original: French

Before: Judge Jean-François Cousin

Registrar

Application

1. On 2 July 2010, the Applicant filed an application with the Dispute Tribunal in which he challenged, first, the decision of the Director, Division of Conference Management, United Nations Office at Geneva (“UNOG”), dated 30 September 2009, to have a memorandum dated 7 September 2009 added to his personnel file, which memorandum might be to his disadvantage, and, second,

11. On 2 October 2009, in a memorandum to the Chief of the Human Resources Management Service, the Applicant requested details of the procedure for placing documents in a staff member's personnel file under Administrative Instruction ST/AI/292. The same day, the Applicant sent another memorandum to the Director of the Division of Conference Management, reiterating his request that his memoranda of 26 June and 17 and 24 September 2009 be placed in the personnel files of the staff members concerned, namely the Chief of Publications Services, the Chief of the Distribution Section, and the four unit chiefs within the Section.

12. On 7 October 2009, the Chief of the Human Resources Management Service informed the Applicant that Administrative Instruction ST/AI/292 of 15 July 1982 was still in force and that the decision to place a document in a staff member's file could be subject to management evaluation.

13. In a memorandum dated 22 October 2009, the Applicant replied to the Chief of the Human Resources Management Service indicating that the latter's response of 7 October 2009 was incomplete and informing him of his intention to ask the Management Evaluation Unit to review the Chief's decision.

14. In a memorandum dated 23 October 2009, the Director of the Division of Conference Management responded to the Applicant's memorandum of 2 October 2009 and suggested he approach the Human Resources Management Service if he wanted to have his memoranda of 17 and 24 September 2009 placed in his superiors' personnel files.

15. On 6 November 2009, the Applicant responded to the above-mentioned memorandum.

16. On 18 February 2010 the Applicant sent a memorandum, in French, to the Management Evaluation Unit, United Nations Secretariat, New York, asking that a management evaluation be done, first, of the decision of 30 September 2009 whereby the memorandum of 7 September 2009 had been placed in his personnel file and, second, of the decision not to place his memoranda of 17 and 24 September 2009 in the personnel files of certain of his superiors. In his letter, he said he was aware that he had not met the deadline of 60 days for making his request, but explained that he had

acted in strict accordance with the Statute of the Tribunal and other relevant enactments. Noting however that the Applicant was now without Counsel and affirmed that he did not understand English, the Tribunal ordered, pursuant to article 19 of its Rules of Procedure and to allow the procedure to continue without affecting the Applicant's rights, that the proceedings continue in French, and asked the Respondent to send the Applicant a French translation of its Answer.

23. On 10 November 2010, the Respondent sent the Applicant the French translation of its Answer and on 6 December the Applicant submitted observations.

24. By Order No. 55 (GVA/2011) of 20 April 2011, the Tribunal invited the parties to a hearing on the admissibility of the application, to be held on 19 May 2011.

25. The Applicant and Counsel for the Respondent attended the hearing, which was held as scheduled on 19 May 2011, in person.

Parties' contentions

26. The Applicant's contentions are:

- (a) His application is admissible. Not being a lawyer, he had no way of knowing the

27. The Respondent's contentions are:

(a) The application is inadmissible on grounds of lateness, for the disputed decision, to place the memorandum of 7 September 2009 in the Applicant's personnel file, was communicated to him in writing on 30 September 2009. Pursuant to Rule 11.2 (c) of the Staff Rules, the Applicant had 60 calendar days to request management evaluation, that is, until 30 November 2009; but in fact he made that request only on 18 February 2010, more than two months late;

(b) It is true that under that rule, the Secretary-General may extend the period of 60 days where informal resolution is attempted by the Office of the Ombudsman, but only in that case is a time extension authorized;

(c) Even supposing it were nevertheless possible to grant an extension of time in exceptional circumstances, such circumstances do not exist in this case, and indeed it is up to the Applicant to show that they do exist. He does not in fact show any such thing, since, contrary to what he claims, Administrative Instruction ST/AI/292 is available in French on the iSeek website under "Human Resources Handbook". In addition, the Applicant, who had been working at the Division of Conference Management for 36 years, could have got help from his colleagues there, many of whom are fluent in French and English. In addition, in his personnel file, the Applicant acknowledges "a practical knowledge of English". In a communication dated 13 May 2003, the Applicant cited Administrative Instruction ST/AI/292 in support of one of his claims without mentioning that he could not understand the content; moreover, in the reply he received from Human Resources, the relevant extracts of the said instruction were cited in French;

(d) Though the Applicant maintains he was unable to contact a representative of the Office of Staff Legal Assistance in Geneva before February 2010, he had every opportunity to do so in New York;

(e) In addition, the Applicant addressed his request for management evaluation to the Chief of the Management Evaluation Unit, not the Secretary-General, as laid down in Rule 11.2 (a) of the Staff Rules;

(f) His application, insofar as it challenges the decision not to place his memoranda of 17 and 24 September 2009 in the personnel files of a number of staff members, is not only inadmissible on account of lateness, that decision having been communicated to the Applicant on 23 October 2009, it is also inadmissible in that there is no direct infringement of the Applicant's rights, as he has no right to insist that a document be placed or not be placed in another staff member's personnel file;

(g) On the merits, the procedure established by Administrative Instruction ST/AI/292 was respected. The disputed document dated 7 September 2009 was communicated to the Applicant, and in his memoranda of 17 September and 2 October 2009, he had the opportunity to submit his comments, which were also placed in his personnel file;

(h) The Applicant has not submitted any shred of evidence to suggest he was the victim of abuse of authority or harassment during the meeting of 23 June 2009. Thus, there was no need to investigate, nor is there any evidence in the record that the Applicant ever submitted a formal

(a) 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 in writing a request for a management evaluation of the administrative decision.

...

(c) A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within sixty calendar days from the date on which the staff member received notification of the administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

36. Regarding the second disputed decision, namely that of 23 October 2009, whereby the Director of the Division of Conference Management rejected the Applicant's request of 2 October 2009, namely that his letters of 17 and 24 September 2009 be placed in his superiors' personnel files, the Applicant was clearly aware of it no later than 6 November 2009, on which date he replied to it. And yet, as noted above, the Applicant did not send a memorandum to the Management Evaluation Unit, to request management evaluation of the decision, until 18 February 2010. Thus, for the same reasons outlined above, and without any need for the Tribunal to rule on the other objection of inadmissibility raised by the defendant, the application, inasmuch it is directed against the decision of 23 October 2009, can only be declared inadmissible also.

Decision

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

The application is dismissed.

(signed) _____

Judge Jean-François Cousin

So ruled this 20th day of May 2011

Entered in the Register on 20 May 2011

(signed) _____

Víctor Rodríguez, Registrar, Geneva
