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REFERENCE: MEU/820-13/R [AS]

21 February 2014

CONFIDENTIAL

153
Days!

5 written requests
FROM the MEU,
for "more time"

PLUS a
number of
phone calls

Question

If the MEU considered that this was 'not receivable':
WHY did it take them 153 days to say so?

WHY, during the course of all these emails and phone calls, did the MEU state that they were working on it?

Dear Mr. Gallo,

This is with regard to your correspondence dated 30 September 2013 and addressed to the Management Evaluation Unit ("MEU") concerning the outcome of your e-PAS rebuttal recourse for the 2012-2013 performance cycle. Following our review of the compliance of your request with the procedural requirements under the Staff Rules, we regret to inform you that your request is not receivable, as the matter you submitted does not constitute a reviewable administrative decision.

In reaching this determination, we had regard to the law and jurisprudence pertaining to management evaluation. In particular, we noted Staff Rule 11.2(a), which sets out the MEU's competence to review a staff member's request as follows:

"(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."

In the context of this Rule, the MEU considered the definition of an "administrative decision" articulated by the former United Nations Administrative Tribunal (UNAdT) in *Andronov*, Judgment No. 1157 (2003), and confirmed by the United Nations Appeals Tribunal ("UNAT") and the United Nations Dispute Tribunal ("UNDT"), as:

"a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences."

The MEU further noted that, drawing on this precedent, in *Planas*, UNDT/2009/086, the UNDT held that an administrative decision can only be considered as such if, *inter alia*, it has "direct legal consequences (effects) on an

Mr. Peter Anthony Gallo
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The MEU does not appear to consider that an individual's rights and obligations include the right of a staff member to have a Rebuttal of an Annual Appraisal considered on its merits.

individual's rights and obligations." This is further confirmed in the holdings of the UNAT in *Andati-Anwayi*, 2010-UNAT-058 and in *Nwuke* 2010-UNAT-099, to the effect that whether a contested decision amounts to an administrative decision is determined by, *inter alia*, whether the contested administrative decision affects the staff member's rights directly.

We also noted sections 15.5 and 15.7 of ST/AI/2010/5, which provide:

"15.5 *The performance rating resulting from the rebuttal process shall be binding on the head of the department/office/mission and on the staff member concerned, subject to the ultimate authority of the Secretary-General as Chief Administrative Officer of the Organization, who may review the matter as needed on the basis of the record.*

"15.7 *The rating resulting from an evaluation that has not been rebutted is final and may not be appealed. However, administrative decisions that stem from any final performance appraisal and that affect the conditions of service of a staff member may be resolved by way of informal or formal justice mechanisms.*" [Emphasis added]

Point of clarification: my evaluation **WAS** rebutted!!!

I was "essentially" challenging the report of the Rebuttal Panel because they FAILED TO EXERCISE their jurisdiction; they failed to consider the Rebuttal of my Annual Appraisal ON ITS MERITS.

In this light, we noted that your request for management evaluation essentially challenges the performance rating, as well as the substantive comments on performance. However, no administrative decisions that affect your conditions of service have been taken based on the rating and/or the substance of your 2012-2013 e-PAS report, and, in fact, your appointment was extended until 16 March 2015. Based on the above, the MEU concluded that your request does not concern an administrative decision within the meaning of Staff Rule 11.2(a), and therefore the MEU does not have the authority to review the matter.

We regret that we are not in a position to assist you further.

So basically the MEU is to be thanked for wasting so much time that I was then time-barred from challenging the failure of the Rebuttal Panel to consider the rebuttal of an Annual Appraisal that was patent retaliation.

Pardon me for not being overly impressed at this demonstration of the highest standards of efficiency, competence and integrity expected of an International Civil Servant.

Yours sincerely,



Christian Rohde, Chief
 Management Evaluation Unit
 Office of the Under-Secretary-General
 for Management *Since rewarded by being promoted to Registrar of the UNDT.....*

- cc: Ms. C. Lapointe
- Mr. C. Saunders
- Mr. M. Stefanovic
- Mr. G. Kumar
- Ms. V. Le Crichia-Wenzel