



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2009/31

Judgment No.: UNDT/2009/031

Date: 7 October 2009

English

Original: French

**Before:** Judge Jean-François Cousin

**Registry:** Geneva

**Registrar:** Víctor Rodríguez

DIALLO

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Antonio Lombardi

**Counsel for Respondent:**

Ivan Koulov, HRMS/UNOG

**Notice:** The format of this judgment has been modified for publication purposes in accordance with article 26 of the rules of procedure of the United Nations Dispute Tribunal.

## **Application**

1. On 27 February 2009 the applicant, through his counsel, submitted an appeal to the Joint Appeals Board against the decision of the Chief, Human Resources Management Service, United Nations Office at Geneva, to terminate his appointment for reasons of health, pursuant to staff regulation 9.1.
2. In his appeal, the applicant requested the Joint Appeals Board to:
  - (a) Rescind the contested decision;
  - (b) Apply to his case staff rule 106.4, which provides that “Staff members shall be entitled to compensation in the event of death, injury or illness attributable to the performance of official duties on behalf of the United Nations, in accordance with the rules set forth in appendix D to these Rules”;
  - (c) Guarantee that the administration will follow a regular and transparent procedure in examining his case;
  - (d) Provide assurance that he will be able to exercise his right to appeal with regard to the benefits awarded.
3. The applicant’s contentions are as follows:
  - (a) The decision to terminate his appointment was not taken in a transparent manner and he was not informed about the financial and administrative implications of the decision;
  - (b) The applicant should have received prior notice before the decision to terminate his appointment was taken, as stipulated in staff rule 109.3;
  - (c) In his report, the Chief, Medical Services Section, overlooked the applicant’s psychological problems.
4. The respondent’s contentions are as follows:

(a) The appeal is irreceivable because the applicant failed to comply with staff rule 111.2 (a) (ii) concerning the time allowed for submitting an appeal to the Joint Appeals Board;

(b) On the merits, the appeal is groundless because the decision to terminate the applicant's appointment for reasons of health was taken in accordance with the Staff Rules.

5. With regard to the late submission of his appeal, the applicant asserts that he met the deadlines set out in the Secretary-General's letter of 3 December 2008 acknowledging receipt of the applicant's request for review. He also hopes that the Secretary-General will consider the difficulties he faced in submitting his appeal and that his appeal will not be rejected for reasons of irreceivability.

#### **Facts**

6. By letter dated 20 June 2008, the Geneva Office of the United Nations Joint Staff Pension Fund notified the applicant of the decision of the Staff Pension Committee to award him a disability benefit on a permanent basis under article 33 of the United Nations Joint Staff Pension Fund regulations. The letter also informed the applicant that, given his age, he could opt for early retirement in lieu of a disability benefit. It further indicated that an estimate of his retirement and disability benefit entitlements was attached to the letter so that he could choose between the two options.

7. By letter dated 4 July 2008, the applicant replied to the United Nations Joint Staff Pension Fund that he had not received the estimate mentioned in the letter of 20 June 2008 and requested that it be sent to him.

8. By letter dated 20 August 2008, received on 5 September by the Director of Administration of the United Nations Office at Geneva, the applicant requested that the Director provide him with an estimate of his disability benefits so that he could choose between early retirement and a disability benefit.

9. On 24 August, the United Nations Joint Staff Pension Fund sent the applicant an estimate of his early retirement entitlements.

10. By form dated 26 August 2008, received the same day by the United Nations Joint Staff Pension Fund, the applicant informed the Fund that he was opting for a disability benefit.

11. By letter dated 18 September 2008, the Chief, Human Resources Management Service, United Nations Office at Geneva, informed the applicant that the United Nations Joint Staff Pension Fund had approved the award of disability benefits to him, and that accordingly the Secretary-General had decided to terminate his appointment for reasons of health, pursuant to staff regulation 9.1.

12. By letter dated 13 November 2008, the applicant, through counsel, requested the Secretary-General to review the above-mentioned decision.

13. By letter dated 3 December 2008, the Administrative Law Unit of the Office of Human Resources Management, United Nations Secretariat, informed the applicant that his request for review had been received on 28 November 2008. The letter also reminded the applicant of the time allowed for appeals under staff rule 111.2 (a), to wit: (i) If the Secretary-General replies to the staff member's letter, he or she may appeal against the answer within one month of the receipt of such reply; (ii) If the Secretary-General does not reply to the letter within one month in respect of a staff member stationed in New York or within two months in respect of a staff member stationed elsewhere, the staff member may appeal against the original administrative decision within one month of the expiration of the time limit specified in this subparagraph for the Secretary-General's reply.

14. By letter dated 29 December 2008, the Administrative Law Unit of the Office of Human Resources Management notified the applicant that, after reviewing the contested decision, the Secretary-General had found that it did not violate the applicant's rights. The letter also informed the applicant that if he was not satisfied with the Secretary-General's reply he could

appeal against the response within one month of receipt of that reply, pursuant to staff rule 111.2 (a) (i).

15. The applicant received the above-mentioned letter on 2 January 2009.

16. On 27 February 2009 the applicant, through his counsel, filed an appeal against the decision of 18 September 2008. The appeal was received at the Geneva Joint Appeals Board on 3 March 2009.

17. On 30 March 2009, counsel for the applicant proposed that the matter be settled through conciliation. On 28 April 2009, the parties were informed that the Presiding Officer of the Joint Appeals Board had come to the conclusion that it was impossible to settle the matter through conciliation.

18. The respondent's written reply to the appeal was submitted on 28 May 2009.

19. Pursuant to the transitional measures outlined in Secretary-General's bulletin ST/SGB/2009/11, the case was transferred to the United Nations Dispute Tribunal on 1 July 2009 for it to hear and pass judgement thereon.

20. On 14 August 2009, counsel for the applicant submitted his comments on the respondent's reply.

21. By letter dated 7 September 2009, counsel for the applicant petitioned the Tribunal to suspend the proceedings with a view to conciliation between the parties.

22. By memorandum dated 18 September 2009, the respondent submitted observations on the applicant's comments and did not indicate willingness to accept the applicant's request for conciliation.

### **Judgment**

23. The applicant is contesting the decision to terminate his appointment for reasons of health, pursuant to staff regulation 9.1.

24. Rule 111.2 (a) of the Staff Rules in effect at the time of the alleged facts provides that:

“A staff member wishing to appeal an administrative decision pursuant to staff regulation 11.1 shall, as a first step, address a letter

to the Secretary-General requesting that the administrative decision be reviewed; such letter must be sent within two months from the date the staff member received notification of the decision in writing.

(i) If the Secretary-General replies to the staff member's letter, he or she may appeal against the answer within one month of the receipt of such reply;

(ii) If the Secretary-General does not reply to the letter within one month in respect of a staff member stationed in New York or within two months in respect of a staff member stationed elsewhere, the staff member may appeal against the original administrative decision within one month of the expiration of the time limit specified in this subparagraph for the Secretary-General's reply."

25. It is apparent from the record of the case that by letters dated 3 and 29 December 2008, the Administrative Law Unit of the Office of Human Resources Management reminded the applicant of the provisions mentioned above.

26. It also follows from the statement of appeal submitted by counsel for the applicant that the applicant received the Secretary-General's response on 2 January 2009.

27. Pursuant to staff rule 111.2 (a) (i) then in effect, the applicant had until 2 February 2009 to file an appeal before the Joint Appeals Board. However, the applicant's appeal is dated 27 February 2009 and was not received by the Joint Appeals Board until 3 March 2009. Counsel for the applicant did not present any exceptional circumstance that prevented him from filing an appeal within the time limits prescribed in the Staff Rules then in effect.

28. It follows from the foregoing that the request is irreceivable before the United Nations Dispute Tribunal because it was submitted late.

29. For these reasons, the Tribunal DECIDES:

The application is rejected.

*(signed)*

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Judge Jean-François Cousin

Dated this 7<sup>th</sup> day of October 2009

Entered in the Register on this 7<sup>th</sup> day of October 2009

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*(signed)*

Víctor Rodríguez, Registrar, UNDT, Geneva