



United Nations Dispute Tribunal

Case No.: UNDT/GVA/2009/28
Judgment No.: UNDT/2009/037
Date: 14 October 2009
English
Original: French

Before: Judge Jean-François Cousin
Registry: Geneva
Registrar: Víctor Rodríguez

JOHNSON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:
Anthony Salmon

Counsel for respondent:
Shelly Pitterman, DHRM/UNHCR

Notice: The format of this judgment has been modified for publication purposes in accordance with article 31 of the rules of procedure of the United Nations Dispute Tribunal.

Application

1. On 6 February 2009, the applicant submitted an appeal to the Joint Appeals Board requesting the United Nations to refund her staff assessment deductions in respect of her salary and other emoluments received from the Organization in 2006 and 2007.

Applicant's claim

2. She maintains that she was not late in submitting her appeal since the decision of which she is requesting a review was taken on 10 September 2008, following an exchange of several e-mails with the Income Tax Unit of the United Nations Secretariat. It was not until she received an e-mail dated 10 September 2008 that she was informed that she could contest the rejection before the United Nations Administrative Tribunal. After consulting the Geneva Joint Appeals Board, she submitted her request for a review to the Secretary-General on 2 November 2008, which is within the time frame stipulated by the Staff Rules. She attempted in good faith to reach an agreement through negotiation rather than by legal means.

3. Prior to joining the United Nations in June 2006, she had accumulated a tax credit in her country of origin, the United States of America. The United States Internal Revenue Service (IRS) allows her to deduct this tax credit, until it is used up, from income tax payable by her. However, the IRS is unable to write her a cheque for the amount of this credit. She therefore paid United States federal income tax using her tax credit and the Secretary-General cannot maintain that she did not pay income tax in the United States. Accordingly, the United Nations, pursuant to staff regulation 3.3 (f) (i), should refund the amount deducted from her salary by the Organization as staff assessment — an amount which she would have been refunded if she had not used her tax credit. The refusal of the United Nations to do so caused her harm.

The Respondent's observations

4. The appeal is not receivable since the applicant submitted her request for a review to the Secretary-General on 2 November 2008, whereas she received notification of the decisions not to reimburse her salary deductions on 24 May 2008 in respect of her 2007 taxes and on 26 June 2008 in respect of her 2006 taxes. The decision that she submitted for review by the Secretary-General merely confirms the previous decisions rejecting her claims and cannot justify reopening the time limits for an appeal. The Administration is not required to indicate remedies when taking its decisions.

5. The United Nations rules and regulations that refund to staff members income tax payable by them in their countries of origin are aimed at achieving equal treatment of staff members of all nationalities and not at conferring an advantage or disadvantage. A refund is given only if the staff member was required to pay national income tax; however, the applicant paid no income tax and the United Nations rules and regulations oblige staff members to take full advantage of all adjustments and deductions applicable to income, including tax credits, in order to minimize their tax liability.

The facts

6. In June 2006, the applicant, a United States citizen, joined the Office of the United Nations High Commissioner for Refugees.
7. In April 2007, she submitted her United States income tax return for the year 2006 to the Income Tax Unit of the United Nations Secretariat; and in March 2008, she submitted her tax return for the year 2007. No tax was due for the two years.
8. On 24 May 2008, the Income Tax Unit informed her that, since she owed no federal income tax for the year 2007, she could not claim any refund from the United Nations.
9. On 26 June 2008, the Income Tax Unit wrote to inform her that she could not claim any refund from the United Nations for either 2006 or 2007 because she did not owe the IRS any tax on salaries and emoluments received from the United Nations for 2006 and 2007.
10. On 10 September 2008, following several e-mails from the Applicant to other services, the Income Tax Unit confirmed the aforementioned information to the Applicant and informed her that she could appeal to the United Nations Administrative Tribunal.
11. On 2 November 2008, the applicant requested the Secretary-General to review the decision of 10 September 2008. This request was rejected on 8 January 2009.
12. On 6 February 2009, the applicant submitted an appeal to the Geneva Joint Appeals Board.
13. In accordance with the transitional measures laid down in General Assembly resolution 63/253, the case was transferred to the United Nations Dispute Tribunal on 1 July 2009.

Judgment

14. Staff rule 111.2 (a) provides:

“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 a letter must be sent within two months from the date the staff member received notification of the decision in writing”.
15. The applicant does not dispute that, by the decisions dated 24 May and 26 June 2008, she was informed by the Income Tax Unit of the rejection of her requests to be refunded for staff assessment deductions from her salary and other emoluments received from the Organization in 2006 and 2007. While the applicant subsequently reiterated her requests to the Unit to receive these refunds, it was not until 2 November 2008, following an e-mail dated 10 September 2008 confirming the previous refusals, that she requested the Secretary-General to review the decisions in question, in other words after the two-month deadline stipulated in staff rule 111.2 (a). Thus, since the request for review by the Secretary-General was submitted late, the appeal to the Geneva Joint Appeals Board was not receivable.
16. However, before rejecting this application, the Tribunal must consider whether the failure to meet the deadline might have been caused by incorrect information

provided by the Administration. In this case, on 10 September 2008, the date when the Income Tax Unit confirmed to the applicant its previous refusals and informed her that she could appeal to the United Nations Administrative Tribunal, the applicant had already exceeded the time limit to contest the decisions of 24 May and 26 June 2008. Thus, incorrect information provided by the Administration concerning the possibility of appealing to the United Nations Administrative Tribunal was not the reason for the lateness. While the applicant maintains that she preferred to resort to negotiation, in accordance with the Organization's recommendations to staff members, the fact remains that this did not absolve her from compliance with the deadline stipulated in the Staff Rules, including with respect to her request for review by the Secretary-General.

17. It follows from the above that the application is not receivable by the United Nations Dispute Tribunal because it is time-barred.

18. For these reasons, the Tribunal DECIDES:

The application is rejected.

Judge Jean-François Cousin

Dated this 14th day of October 2009

Entered in the Register this 14th day of October 2009

Víctor Rodríguez, Registrar, UNDT, Geneva
