



Before: Judge Thomas Laker

Registry: Geneva

Registrar: Víctor Rodríguez

MACNEIL

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

None

Counsel for Respondent:

Steven Dietrich, ALU/OHRM

Introduction

1. The Applicant, a former staff member of the United Nations Mission in Kosovo, contests the Secretary-General's decision dated 23 February 2009 to terminate, with effect from 28 February 2009, her 300-series appointment of limited duration prior to its expiration date on 31 March 2009, without appropriate termination indemnity and compensation in lieu of notice.

Facts

2. The Applicant, who did not provide the Tribunal with a copy of the contested administrative decision, claims that, on 23 February 2009, she was notified of the decision to terminate her appointment.

3. On 25 February 2009, the Applicant and eleven staff members who had also been notified of the decision to terminate their appointments wrote a joint letter to the Secretary-General to request review of the decision.

4. On 26 May 2009, a number of staff members who had sent the above-mentioned request for review to the Secretary-General filed a joint, incomplete statement of appeal to the New York Joint Appeals Board (JAB). The name of the Applicant was not on the list of staff members purported to have filed the appeal.

5. On 26 June 2009, 14 former staff members, including the Applicant, filed, with the heading "class action", a joint, complete statement of appeal to the JAB.

6. Pursuant to the transitional measures set out in resolution 63/253 of the General Assembly, the JAB case was transferred to the United Nations Dispute Tribunal (UNDT) on 1 July 2009.

7. By order dated 09 October 2009, the Tribunal, considering among other things that all 14 individual cases did not raise the same issues and that the file transferred to the Tribunal did not contain all the information necessary for it to pass judgment on each individual case, ordered that the original JAB case be split into 14 separate cases. On the same day, the Applicant was ordered to submit additional information on her case.

8. On 15 October 2009, the Applicant responded partially to the Tribunal's request for information. In particular, she did not clarify whether she had received

an answer from the Secretary-General to her request for review, and if so, when; nor did she explain why her name was not on the list of staff members purported to have filed an incomplete statement of appeal on 26 May 2009.

9. On 16 October 2009, the Tribunal brought to the Applicant's attention that the above-mentioned information was still missing. She requested, and was granted, an extension of time to submit the missing information.

10. On 19 October 2009, the Applicant provided part of the requested information. She stated that she received the Secretary-General's answer, dated 5 April 2009¹, on 19 April 2009. However, despite two previous requests from the Tribunal, she still did not provide explanations as to why her name was not on the list of staff members purported to have filed an incomplete statement of appeal.

11. On 23 October 2009, the Tribunal brought to the Applicant's attention that her appeal was time-barred and recommended that she withdraw her case by 30 October 2009, failing which the Judge would issue a summary judgment. The Applicant did not respond to the Tribunal.

Considerations

12. According to article 9 of the rules of procedure, the Tribunal may determine, on its own initiative, that summary judgment is appropriate. This usually would happen when there is no dispute as to the material facts of the case and judgment is restricted to a matter of law. The question of receivability *ratione temporis* in this case is such a matter of law.

13. Staff rule 111.2(a)(i), which was applicable at the time the Applicant filed an appeal with the JAB, provided that:

(a) 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.

¹ In fact, the Secretary-General's answer to the Applicant's request for review is dated 15 April 2009.

(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;

14. Considering that, as per her own statement, the Applicant received the Secretary-General's answer to her request for review on 19 April 2009, the Applicant had until 19 May 2009 to appeal in accordance with the above-quoted staff rule, whereas she only filed an appeal on 26 June 2009.

15. The Applicant also failed to clarify why her name was not on the list of staff members purported to have filed an incomplete statement of appeal on 26 May 2009. However, even assuming that her name was absent from the list due to a mere oversight, as information provided by other Applicants seems to indicate, the Applicant still had until 19 May 2009 to appeal.

16. It follows from the foregoing that the Applicant did not file an appeal with the JAB within the time limit prescribed by the Staff Rules and that her appeal is time-barred.

Conclusion

17. The application is rejected in its entirety.

(Signed)

Judge Thomas Laker

Dated this 2nd day of November 2009

Entered in the Register on this 2nd day of November 2009

(Signed)

Víctor Rodríguez, Registrar, UNDT, Geneva