



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2009/115

Judgment No.: UNDT/2009/068

Date: 6 November 2009

Original: English

Before: Judge Memooda Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

BLANC

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for applicant:

Self-represented

Counsel for respondent:

Steven Dietrich, ALU

Introduction

1. Before me is an application, received by the Registry of the United Nations Dispute Tribunal on 27 August 2009, to appeal an administrative decision taken on 20 April 2009 by the Chief Civilian Personnel Officer of the United Nations Stabilization Mission in Haiti (MINUSTAH) to stop payment of the applicant's salary as of end April 2009. In his application, the applicant requests the Dispute Tribunal to order MINUSTAH to pay his salary on a monthly basis, from April 2009 until the outcome of his appeal. There are no particulars substantiating any other claims in this application, nor a prayer for any other relief.

2. Despite several requests from the Registry of the Dispute Tribunal to clarify whether he had requested an administrative review or management evaluation of the contested decision regarding his alleged salary entitlement, and although he submitted various documents in support of his application, the applicant failed to provide the Dispute Tribunal with a copy of any such administrative review or management evaluation, or a copy of a request of such a review or evaluation.

3. On 13 October 2009, the applicant, for the very first time, sent to the Dispute Tribunal a copy of a Management Evaluation Report, dated 13 August 2009, of "the decision of 29 May 2009 not to renew [his] . . . appointment [of limited duration] beyond its expiration date of 30 June 2009". The report was accompanied by a letter dated 18 August 2009, in which the applicant writes that he intends to appeal "the decision of August 13 2009", clarifying the remedies that he seeks, i.e. payment of his salary and renewal of his contract.

4. On 22 October 2009, following the respondent's failure to file a reply, I ordered the respondent to file its reply by no later than 26 October 2009, and the applicant to file his answer by no later than 29 October 2009. I further directed that the matter be

dealt with on the papers unless the parties indicated otherwise by no later than 30 October 2009.¹

5. On 26 October 2009, the respondent filed its reply, submitting that the application is not receivable since the applicant did not file a request for administrative review under former staff rule 111.2(a). The respondent attached three documents to its reply. The first document is a separation notification dated 10 August 2009, in which the Chief Civilian Personnel Officer in MINUSTAH informs the Officer in Charge of the Finance Section in MINUSTAH that the applicant was separated from service effective 31 July 2009, and was going to receive a final payment for 11 working days in April, one day of certified sick leave in May, full salary in July, 23 hazard days in July, and three days of accrued annual leave to be paid upon separation (Annex I). The second document is an instruction of payment dated 19 August 2009 (Annex II). The third document is a letter dated 27 July 2009 sent by the Chief of National Staff Unit in MINUSTAH to the Officer in Charge of Mission Support in MINUSTAH, in which the Chief of National Staff Unit recommends that the applicant will be based on special leave without payment from 7 April to 30 June 2009 due to his unauthorized absence from work (Annex III).

6. On 28 October 2009, the Dispute Tribunal received the applicant's answer, in which he simply reiterated his request that the Dispute Tribunal order the administration to pay him his salary. The applicant failed to address the respondent's contention that this matter is not receivable on the grounds that he failed to request an administrative review or management evaluation.

7. The parties having raised no objection, this matter is therefore decided on the papers before me.

¹ United Nations Dispute Tribunal, Case No. 2009/NY/2009/115 (Blanc), Order No. 130 to File Reply (22 October 2009) (regarding the duty of counsel to file pleadings and the purpose of pleadings).

Brief facts

8. The applicant avers that following a complaint he had lodged with his supervisor on 19 January 2009 against a colleague, he became the subject of physical threats and varied accusations. Additionally, his supervisor decided to transfer the applicant to another duty station, which transfer he initially accepted but subsequently refused. As a result, the applicant took his annual leave, and on 5 April 2009, two days prior to the end of his leave, he contacted the Personnel Section and explained that he did not feel secure to return to work. In a letter attached to the application and dated 20 April 2009, the Chief Civilian Personnel Officer responded as follows:

1. It has been brought to my attention that you failed to report back to work, on 7 April 2009, upon completion of your approved annual leave.
2. For your information, your continued unauthorized absence may create a reasonable presumption of your intent to separate from the Organization. In this connection, please be advised that unless you report to work within ten (10) days from receipt of this notice and provide satisfactory proof that your absence was involuntary and caused by reasons beyond your control, action may be taken to separate you on the grounds of abandonment of post. Your attention is also drawn to the fact that recent communication from you to the Administration regarding issues of concern to you in no way justifies your absence from work.
3. You will further recall that, in a meeting held in Port-Au-Prince on 4 March 2009 between you and the Chief of Mission Support and attended by the Chief of Mission Administrative Support and the Chief Civilian Personnel Officer, you agreed to take up your new assignment to the Civil Affairs Office, Jeremie, where your post has been transferred. You are expected to live up to that agreement and, following a return to work, immediately arrange to report to Jeremie.
4. For your information, I have authorized a stop-payment on your April 2009 salary until such time as the question of your unauthorized absence is resolved.
5. Your cooperation would be appreciated.

9. The applicant responded on 29 April 2009, alleging that he was a victim of harassment and threats and that the decision to transfer him against his will was discriminatory, punitive, and a way to intimidate him in order to protect the harasser. He further alleged that he had repeatedly used the channels provided by the institution to no avail and had received no response on the complaints he had made regarding abuse of power.

10. Thereafter a decision was taken not to extend the applicant's contract beyond 30 June 2009. The Management Evaluation Report, provided to the Dispute Tribunal by the applicant, states that the applicant requested a suspension of action of the decision not to extend his contract, and that his appointment was extended until 30 July 2009 as the Deputy Secretary-General had granted a request to allow time for his performance evaluation report to be finalized.

11. However, it appears from Annex I and Annex III to the reply that the applicant did not report for duty from 7 April to 30 June 2009, and was separated from service effective 31 July 2009.

Applicable law

12. Former staff rule 111.2(a) provided 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.

13. Rule 11.2, sub-paragraphs (a) and (c), of the current Staff Rules, in place since 1 July 2009, provides that:

(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.

14. Pursuant to article 8.1 of the Statute of the United Nations Dispute Tribunal (Statute) an application shall be receivable if, *inter alia*:

(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required; and

(d) The application is filed within the following deadlines:

(i) In cases where a management evaluation of the contested decision is required:

a. Within 90 calendar days of the applicant's receipt of the response by management to his or her submission; or

b. Within 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for other offices.

15. The Secretary-General's bulletin ST/SGB/2009/11, dated 24 June 2009, clarifies, in sub-section 1.4, that:

As of 1 July 2009, the United Nations Dispute Tribunal will be established as the first tier of the formal system of justice. For the purpose of determining the receivability of an application filed with the United Nations Dispute Tribunal, a staff member who has submitted a request for an administrative review of a contested administrative decision prior to 1 July 2009 shall be considered to have satisfied the requirement to submit a request for a management evaluation, as provided in article 8, paragraph 1(c), of the statute of the United Nations Dispute Tribunal.

16. It is clear from the provisions above and the Dispute Tribunal's jurisprudence that a request for an administrative review or management evaluation is mandatory, with the exception of disciplinary cases.²

Analysis

17. The application before me clearly relates to the contested administrative decision to stop paying the applicant's salary as of April 2009.

18. The applicant did not request an administrative review or management evaluation of the contested decision as required, although he has sought a management evaluation of the decision not to renew his appointment.

19. The applicant's request for a management evaluation of the decision not to renew his appointment does not satisfy the receivability requirement under article 8.1(c) of the Statute for the purposes of the current application, since the administrative decision to stop payment of the applicant's salary and the administrative decision not to renew his appointment are two distinct administrative decisions taken at separate times.

20. It is clear from the applicant's submissions that the applicant was well aware that these are two discrete decisions, and from his application filed with the Registry of the Dispute Tribunal it is clear that he is contesting only the decision to stop full payment of his salary during his employment period. To date the applicant has not filed any application contesting the decision not to renew his contract and he would be best advised to do so immediately.

² United Nations Dispute Tribunal, Judgment No. UNDT/2009/35, *Caldarone*, para. 8.7 (2009).

Conclusion

21. In light of the applicant's failure to request an administrative review or management evaluation of the contested decision not to pay his salary, I conclude that this current application before me is not receivable.

(Signed)

Judge Memooda Ebrahim-Carstens

Dated this 6th day of November 2009

Entered in the Register on this 6th day of November 2009

(Signed)

Hafida Lahiouel, Registrar, New York