



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2010/072

Judgment No.: UNDT/2011/074

Date: 26 April 2011

Original: English

---

**Before:** Judge Ebrahim-Carstens

**Registry:** New York

**Registrar:** Santiago Villalpando

SCHEEPERS

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**JUDGMENT**

---

**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Alan Gutman, ALS/OHRM, UN Secretariat

## **Introduction**

1. In or about June 2009 the Applicant, a Security Officer with the Department of Safety and Security (“DSS”), joined its Canine Unit. All members of the Canine Unit receive an allowance in the amount of USD1,000 per month to compensate them for the additional costs incurred in respect of their official duties as canine handlers, as they are required to keep the dogs with them on a 24-hour basis and to transport them to and from their residence and place of work using their own vehicles. In the present application, filed on 26 May 2010, the Applicant claims that this allowance is insufficient to compensate him for his actual work-related expenses. The Applicant seeks, *inter alia*, retroactive reimbursement of various costs, retroactive payment of daily subsistence allowance, and revision of the monthly allowance amount.

2. The Respondent contends that the present application is time-barred as it was not filed within 90 days from the date of receipt by the Applicant of the management evaluation, and that, in any event, the existing allowance amount was calculated correctly and is sufficient to compensate the Applicant for his work-related costs.

## **Procedural matters**

3. The Respondent’s reply was filed on 28 June 2010. On 29 June 2010 the Applicant filed comments to the reply. On 9 July 2010 the Respondent filed a motion requesting the Tribunal to dismiss the present application as time-barred. On 20 July 2010 the Applicant was directed to submit a reply to the Respondent’s motion. Specifically, the Applicant was directed to “address the Respondent’s arguments in the submission dated 9 July 2010, stating the reasons for the delay in filing his application and explaining any exceptional circumstances that precluded him from exercising his right to appeal within the prescribed time limits”. The Applicant was further directed to include any relevant supporting documentation.

4. The Applicant's submission was filed on 26 July 2010, in response to which the Respondent filed a reply on 28 July 2010.

5. The matter was thereafter scheduled for a case management hearing, which was held on 15 April 2011. The Applicant and Counsel for the Respondent attended the hearing in person. At the hearing, the Tribunal sought to clarify the scope of the case as well as a number of factual issues. By Order No. 113 (NY/2011), the parties were directed to file final submissions on receivability. The parties were also informed by the same Order that the Tribunal would first consider the issue of receivability and, should the application be deemed receivable, further orders would be issued directing the parties to file further submissions.

6. The Applicant's final submission on receivability was filed on 20 April 2011, and the Respondent's final submission on the same issue was filed on 21 April 2011.

## **Facts**

7. Effective late 2004, the Organisation adopted a lump-sum approach for the payment of additional allowance to the canine handlers. The reasons for that decision were explained in a note from the Assistant Secretary-General for Human Resources Management to the Controller, dated 29 September 2004. The note stated:

Discussions took place between OHRM [i.e., the Office of Human Resources Management], the Security Service and the Executive Office regarding the compensation to be paid to Security Officers of the new Canine Unit, who are required to perform duties above and beyond what is expected of other Security Officers. In particular, they are to look after the dog assigned to them on a permanent basis. ... [I]t is essential for the dog to live in the home of the Security Officer to whom the dog has been assigned and to come to the UN with its handler.

On that basis, and taking into account the experience of the comparator police departments that were retained for the 2000 comprehensive salary survey exercise in respect of their own employees who handle dogs, it was found that the Security Officers

concerned would be entitled to claim under existing rules compensation for the following:

- daily overtime, including on weekend and holidays, in recognition of the need to provide on-going care, custody and control of the dogs;
- reimbursement of mileage at the official [rate] for the use of their personal vehicle to transport the animal between home and work;
- cost of an EZ pass for official use.

Rather than having multiple offices compute and process multiple claims each month, especially when the Canine Unit reaches its anticipated strength of 9 Officers, the Security Service, the Executive Office and OHRM concluded that it would be administratively much better to come up with a lump sum approach which would cover all the payments involved. On that basis, we would propose that the Security Officers in the Canine Unit receive an additional [USD]1,000 per month based on current salary scale and incidental costs.

I should be grateful to receive your concurrence with the above approach and to pay the Security Officers of the Canine Unit a lump sum of [USD]1,000 per month. This amount would be reviewed and adjusted periodically.

8. On 6 August 2007 the Applicant joined DSS as a Security Officer at the S-1 level. He was promoted to the S-2 level on 1 August 2008. The Applicant subsequently applied for a vacancy in the Canine Unit. His application was successful and he attended a training course between 2 March and 12 June 2009, following which he joined the Canine Unit.

9. On 24 July 2009 the Applicant sent a memorandum to the Security and Safety Service of DSS, stating, *inter alia*, that the initial assessment completed in 2004 was outdated and required review to accommodate for the increased work-related costs.

10. On 3 September 2009 the Applicant filed a request for management evaluation, contesting, in effect, the decision not to reimburse him for the full amount of his work-related expenses and seeking, *inter alia*, revision of the monthly allowance amount, as well as the revision of compensation guidelines and the establishment of new administrative policies.

11. The Applicant was informed of the results of the management evaluation by a letter from the Under-Secretary-General for Management, dated 16 October 2009, which the Applicant received on the same date. The management evaluation letter, in effect, rejected the Applicant's claims for additional compensation. The letter stated, *inter alia*:

In summary, the MEU [i.e., the Management Evaluation Unit] concluded that the approach for reimbursing [canine] handlers elaborated by the Administration comports with the applicable institutional legal instruments. The MEU noted that both DSS and OHRM contemplated at the time that they formulated the monthly allowance that it would be subject to periodic adjustment to account for changes in prevailing rates applicable to mileage and over-time; however, the monthly allowance has not changed since it was established in 2004. Accordingly, the MEU recommended that the Administration adjust the monthly allowance so that it reflects prevailing rates for mileage set out in ST/IC/2008/30 [Rates of reimbursement for travel by private motor vehicle] and overtime as set out in the current salary scales for staff in the Security Service category at Headquarters. The MEU also recommended that the Administration revisit the current mileage factor in the monthly allowance. The MEU further recommended that the Administration conclude such exercise by no later than 1 December 2009. After such exercise is finalized, and should such exercise result in an increased monthly allowance, you should be reimbursed accordingly, with retroactive effect, from the date of this letter.

...

In the light of the foregoing consideration of your case, the Secretary-General has decided to endorse the findings and recommendations of the MEU. Any recourse in respect of this decision may be addressed to the United Nations Dispute Tribunal (UNDT) in accordance with provisional Staff Rule 11.4. In the event you decide to pursue an appeal you may wish to obtain assistance from a counsel through the Office of Staff Legal Assistance [(“OSLA”)] (osla@un.org) or, if you so wish, at your expense from outside counsel.

12. On 7 December 2009 the Officer-in-Charge of the Conditions and Service Section, Human Resources Policy Service (“HRPS”), OHRM, sent a memorandum to the Chief of the Management Evaluation Unit of the Department of Management in

follow-up to the 16 October 2009 letter, confirming, *inter alia*, that the amounts paid to the Applicant were sufficient to compensate him for his work-related expenses and that the monthly allowance amount of USD1,000 would not be increased. At the case management hearing before the Tribunal, the Applicant submitted that he received a copy of the letter of 7 December 2009 on the day it was issued.

13. The Tribunal observes, in this regard, that the note of 29 September 2004 from the Assistant Secretary-General for Human Resources Management to the Controller, referred to at para. 7 above, stated that the allowance amount of USD1,000 “would be reviewed and adjusted periodically”. However, it appears from the case record that there have been no adjustment and review exercises since 2004 aside from the review in December 2009, which was conducted solely pursuant to the Management Evaluation Unit’s recommendation.

14. Between December 2009 and May 2010 the Applicant engaged in informal discussions with his supervisors and the Executive Office of DSS, in part with the help of OSLA.

15. The Applicant filed his application with the Dispute Tribunal on 26 May 2010.

16. As the Tribunal stated in Order No. 113 (NY/2011), the present judgment will deal only with the question of receivability of the present application. Therefore, the parties’ contentions below reflect their claims with respect to the issue of receivability only.

### **Applicant’s submissions**

17. The Applicant’s principal contentions may be summarised as follows:

- a. The filing of the present application was delayed due to exceptional circumstances, namely his attempts to resolve the matter informally, including

with the assistance of OSLA. The Applicant contacted OSLA after receiving the management evaluation in October 2009 and OSLA began assisting the Applicant on 23 October 2009. Consultations between OSLA and the Executive Office of DSS were unsuccessful, and attempts to informally resolve the matter ceased on 11 May 2010;

b. It was the Applicant's understanding at the time—on OSLA's advice—that attempts to resolve the matter informally would ordinarily amount to exceptional circumstances within the meaning of art. 8.3 of the Tribunal. Attached to the Applicant's submission dated 26 July 2010 was a copy of an email dated 23 July 2010 to the Applicant from his former OSLA Counsel, stating, *inter alia*:

An informal discussion between myself and [the] Executive Officer, DSS, took place but, albeit positive and amicable, without the desired result. Nonetheless, it was decided to revisit the issue in due course. In the interim I also briefly discussed the issue with a representative from the Management Evaluation Unit and advised you that whereas attempts to informal resolution continued you would retain your right to approach the Tribunal if the attempts would be unsuccessful. Regrettably, as a result of work pressure on both sides, it took longer than anticipated to have a further discussion with [the Executive Officer], which finally took place in May of 2010, where it was ultimately concluded that the outstanding issues could not be resolved informally, following which [OSLA] advised you of same as well as that an agreement had been reached with the Executive Officer that the attempts to an informal resolution had been unsuccessful. Our Office advised you that, should you decide to proceed, your recourse was now with the Tribunal but that we would not be in a position to represent you.

...

After the above-mentioned sequence of events, the Tribunal issued a judgement ([*Abu-Hawaila* UNDT/2010/102, rendered on 3 June 2010]) wherein it held that [in cases involving] informal *inter partes* negotiations, therefore without the assistance of the Ombudsman's Office and/or its Mediation

Division, the time limits stipulated in Article 8 of the Statute of the Tribunal would not be suspended. Following this judgement, [OSLA] immediately adjusted its practice and policies in relation to informal *inter partes* discussions to safeguard the procedural rights of staff members whose interests we represent. However, prior to the issuance of aforementioned judgement, [OSLA] assumed, in good faith and in an attempt to obviate potentially unnecessary litigation mindful in particular of the emphasis of the General Assembly on informal dispute resolution, that informal *inter partes* discussions, also without the assistance of the Ombudsman's Office and/or its Mediation Division, would suspend the time limits stipulated in Article 8 of the Tribunal.

### **Respondent's submissions**

18. The Respondent principal contentions may be summarised as follows:

- a. The present application is time-barred as it was filed outside the established time limit. The Applicant had 90 days to file his application with the Dispute Tribunal after receiving the response to his request for management evaluation on 16 October 2009;
- b. Consultations with OSLA, and attempts to resolve an issue through informal channels are ordinary reactions to an adverse finding by the Management Evaluation Unit and cannot be said to fall within the category of exceptional circumstances beyond the control of the Applicant which would prevent him from filing an appeal in a timely manner (see, e.g., *Kita* UNDT/2010/025);
- c. The Tribunal is not empowered to grant the relief requested by the Applicant, namely the revision of guidelines and the establishment of new administrative policies.



## **Consideration**

19. It is common cause that the Applicant's request for management evaluation was filed within the applicable time limits. The Respondent submits, however, that the application is not receivable because the Applicant failed to file the application with the Dispute Tribunal within 90 days of receiving the management evaluation.

20. Pursuant to art. 8.1(d)(i), the Applicant had 90 calendar days to file his application with the Dispute Tribunal after receiving the response to his request for management evaluation on 16 October 2009. The deadline for submitting his application expired on 14 January 2010. His application was filed on 26 May 2010, more than four months after the expiration of the relevant time period.

21. The letter from the Under-Secretary-General for Management, dated 16 October 2009, stated that the Management Evaluation Unit had recommended that the Administration revisit the monthly allowance amount for a possible adjustment for future purposes. In fairness to the Applicant, the Tribunal also considered whether the 90-day time limit for filing an application with the Tribunal should run from the date of the 7 December 2009 response from OHRM to the Management Evaluation Unit, which was provided to the Applicant on the same date.

22. The Tribunal finds that the letter dated 16 October 2009, informing the Applicant of the results of the management evaluation, did not create an expectation that the Applicant had to wait for a further response from the Administration for the management evaluation to be completed. Firstly, the letter stated that the reimbursement would be "from the date of this letter", not retroactively from June 2009, when the Applicant joined the Canine Unit. The referral for possible reimbursement therefore related to a possible future change in allowance, and as far as the Applicant's past expenses were concerned, his claims were denied. Secondly, the Applicant was also advised in the letter of 16 October 2009 that "[a]ny recourse in respect of this decision may be addressed to the United Nations Dispute Tribunal

... in accordance with provisional Staff Rule 11.4”. Thus, as far as the subject matter of the case is concerned, this letter had the effect of being a final management evaluation, and the 90-day time period ran from the date it was received by the Applicant (i.e., 16 October 2009).

23. Further, in light of the Applicant’s submission at the hearing that he received the letter dated 7 December 2009 on the same day it was issued, even if the time limit for filing an application with the Dispute Tribunal were to be counted from that date, the application would still be out of time, as the 90-day period would have then expired on 7 March 2010—more than two months prior to the date the present application was filed.

24. Article 8.3 of the Tribunal’s Statute states that “[t]he Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases”. It is an applicant’s responsibility to pursue her or his case and, where she or he fails to do so, to convince the Tribunal of the existence of exceptional circumstances justifying a waiver of the applicable time limits (*Hunt-Matthes* UNDT/2011/064). Accordingly, unless the Applicant can demonstrate that this is an exceptional case and that the delay in filing his application was due to exceptional circumstances, this application will be deemed time-barred.

25. The Applicant submitted, in effect, that he was delayed with the filing of his application because he had ongoing discussions with management concerning his case.

26. With respect to informal resolution of disputes, it is envisaged by the provisional Staff Rules that deadlines for the filing of an application with the Tribunal may be extended only in cases in which such informal resolution is carried out through the Office of the Ombudsman (see provisional staff rules 11.1(a)–(c) and 11.4(c), in effect from 1 July 2009). Consultations with OSLA and attempts to

informally resolve the matter directly with management, without involvement of the Office of the Ombudsman, generally will not amount to an exceptional circumstance for the purpose of a waiver of the time limits under art. 8.3 of the Statute (see *Kita* UNDT/2010/025, *Bidny* UNDT/2010/031, *Abu-Hawaila* UNDT/2010/102). Otherwise, it would be difficult—if not impossible—for the Tribunal to ascertain whether or not an applicant has complied with the time limits (*Abu-Hawaila* UNDT/2010/102). This line of reasoning was affirmed by the United Nations Appeals Tribunal, which stated in *Abu-Hawaila* 2011-UNAT-118 as follows:

29. This Tribunal also holds that the exceptional suspension of time limits provided for under Article 8(1) of the UNDT Statute and provisional Staff Rule 11.1 applies only to informal dispute resolution conducted through the Office of the Ombudsman. The suspension of time limits cannot be extended by analogy to other informal dispute resolution procedures, precisely because of its exceptional character. Exceptions to time limits and deadlines must be interpreted strictly and are not subject to extension by analogy.

27. As indicated in the case file and acknowledged by the Applicant at the case management hearing, the Applicant's informal discussions with the management of DSS were not conducted through the Office of the Ombudsman. Accordingly, in accordance with existing case law, particularly *Abu-Hawaila* 2011-UNAT-118, the Tribunal finds that the Applicant's informal discussions with management did not amount to an exceptional circumstance warranting a waiver of the applicable time limit. The Tribunal also notes, in this regard, that in *Bidny* UNDT/2010/031, rendered on 22 February 2010 (more than three months prior to the publication of *Abu-Hawaila* UNDT/2010/102), the Tribunal stated:

32. If the applicant maintains that she was late in submitting her request for review to the Secretary-General because of her attempts to find an informal solution with her senior management in August 2004, those attempts did not prevent her from respecting the time limit . . . .

28. Further, as the Dispute Tribunal stated in *Samardzic et al.* UNDT/2010/019, “ignorance of the time limits does not constitute an ‘exceptional circumstance’” (see

also *Diagne et al.* 2010-UNAT-067, stating that every staff member is deemed to be aware of the provisions of the Staff Rules).

29. Accordingly, in terms of the existing case law, the explanations offered by the Applicant cannot support a finding that this is an exceptional case warranting a waiver of the relevant time limit.

### **Conclusion**

30. This present application is time-barred as it was filed outside the prescribed time limit and there are no exceptional circumstances in law that justify the delay. In light of the Tribunal's finding that this case is not receivable, the Tribunal will not consider whether the Applicant would have succeeded in his substantive claims.

31. The application is not receivable and is rejected without determination of its merits.

*(Signed)*

Judge Ebrahim-Carstens

Dated this 26<sup>th</sup> day of April 2011

Entered in the Register on this 26<sup>th</sup> day of April 2011

*(Signed)*

Santiago Villalpando, Registrar, New York