



Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pelé Fomété

ABOSEDRA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for applicant:

Self-represented

Counsel for respondent:

Steven Dietrich, ALS/OHRM, UN Secretariat

Elizabeth Gall, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant is a former staff member of the United Nations Economic and Social Commission for Western Asia (“ESCWA”). He was employed as a Regional Adviser at the L-5/P-5 level.

2. The Applicant requested management evaluation and suspension of the decision not to renew his fixed-term appointment on 8 December 2010. On 14 December 2010, the Under-Secretary-General for Management (“USG/DM”) informed the Applicant that the Secretary-General had decided not to grant his request for suspension of action.

3. Consequently, on 23 December 2010, the Applicant filed an application for suspension of action with the United Nations Dispute Tribunal (“the Tribunal”). On 28 January 2011, the Tribunal granted the Application for suspension of action by Order No. 010 (NBI/2011).

4. On 18 April 2012, the Applicant filed the current Application with the Tribunal contesting the decision not to renew his contract.

Facts:

5. The Applicant was appointed to the post of Regional Adviser at the L-5 level at ESCWA on 16 February 2009. On 23 December 2009, he was offered a fixed-term appointment at the P-5 level with an expiry date of 31 December 2010. As a Regional Adviser, the Applicant worked with two managers: the Director of the Economic Development and Globalization Division (“D/EDGD”) and the Director of the Programme Planning and Technical Cooperation Division (“D/PPTCD”).

6. By an email dated 3 December 2010, the D/PPTCD informed the D/ASD that the Applicant’s post would be re-advertised in the near future and that this was linked to the proposed restructuring of the EDGD. Consequently, he requested that the D/ASD inform the Applicant that his contract would expire on 31 December 2010.

7. On 6 December 2010, the Director of Administrative Services Division (“D/ASD”) informed the Applicant that EDGD/PPTCD had requested that his appointment be allowed to expire on 31 December 2010.

8. By an email dated 8 December 2010, the Applicant requested management evaluation and suspension of action of the contested decision pursuant to staff rule 11.3(b)(ii). This request was denied by the USG/DM. On 23 December 2010, the Applicant submitted a request management evaluation and filed an Application for suspension of action of the contested decision in accordance with staff rule 11.3(b)(i). The Tribunal issued interim orders suspending the implementation of the contested decision.

9. On 28 January 2011, the Tribunal granted the Application for suspension of action until a determination of the case on the merits. The Tribunal noted however that the Applicant would have to file a substantive application on the Contested Decision within the delay provided for by law. The Tribunal noted further that if he failed to file his application within the prescribed delay, the order for suspension of action would lapse automatically.

10. By letter dated 11 February 2011, the USG/DM informed the Applicant that the Secretary-General had instructed ESCWA to renew his appointment pending final approval of the restructuring exercise in EDGD by the Executive Secretary. The Applicant acknowledged receipt of the USG/DM’s letter on 12 February 2011.

11. On 14 February 2012, the Applicant submitted his resignation to the Executive Secretary of ESCWA with immediate effect.

Procedural history

12. On 18 April 2012, the Applicant filed the current Application with the Tribunal contesting the decision not to renew his contract.

13. The Application was served on the Respondent on 23 April 2012, with an instruction to file a Reply on the issue of receivability only by 23 May 2012. The Respondent's Reply on Receivability was received on 23 May 2012 and served on the Applicant on 24 May 2012.

14. On 6 and 17 December 2012, the Registry wrote to the Applicant requesting that he submit his comments to the Respondent's Reply on Receivability by 14 and 21 December, respectively. On 20 December 2012, the Applicant informed the Registry that he had no comments on the Reply.

15. After a review of the submissions of the parties, the Tribunal did not deem it necessary to hold an oral hearing in this matter.

Parties' submissions

Respondent

16. The Respondent submits that the Application is not receivable *ratione temporis* because it was filed with the Tribunal over 11 months after the expiry of the 90-day time limit under art. 8(1)(d)(i) of the Tribunal's Statute. The Respondent contends that since the Applicant requested management evaluation on 23 December 2010 the 45 day time limit expired on 7 February 2011. Accordingly, he should have filed his Application with the Tribunal on or before 9 May 2011. The Respondent submits however that even if time is considered to run from the date the Applicant received the response to his management evaluation, 12 February 2011, he still failed to file his application within 90 days or receipt, that is, on or before 13 May 2011. Instead it was filed on 18 April 2012 and as such, is time-barred.

17. The Respondent also submits that the Application is not receivable *ratione materiae* because the Applicant separated from the Organization as a result of his resignation and not because of the expiry of his fixed-term appointment. The Respondent contends that since the Applicant voluntarily ended his appointment, the contested decision was never implemented by the Administration.

Applicant

18. The Tribunal notes that the Applicant decided to make no submissions on the issue of receivability.

Considerations

17. Is the current application time-barred or was it filed within the timeline prescribed in the Statute and Rules of Procedure of the Tribunal? If it is time-barred, should there be a waiver of the deadline under art. 8.3 of the Statute?

18. Pursuant to Article 8.1 of the Statute¹, an application shall be receivable if:

(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;

19. The available evidence shows that the Applicant filed his request for management evaluation on 23 December 2010 but did not receive a response until 12 February 2011. Under the circumstances of this case, it would be a waste of time for the Tribunal to engage in a protracted discussion as to whether the Applicant's deadline for filing his application to the Tribunal should be pegged to the date of his request for management evaluation or to the date of receipt of the response. The Tribunal notes that by either computation, his application should have been filed sometime between 9 and 13 May 2011 but instead, he chose to wait until 18 April 2012 to file. This was approximately eleven months after the period stipulated in the Statute and the Rules of Procedure of the Tribunal.

¹ See also art. 7 of the Rules of Procedure of the Tribunal on Time limits for filing applications.

20. Accordingly, the Tribunal concludes that the current application is time-barred.

Should there be a waiver of the deadline under art. 8(3) of the Statute?

21. Article 8.3 of the Tribunal's Statute provides that:

The 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. The Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.

22. In *Hunt-Matthes* UNDT/2011/064, the Tribunal held that:

“It is an applicant's responsibility to diligently pursue his or her case and, where he or she fails to do so, it is his or her responsibility to convince the Tribunal that exceptional circumstances did indeed exist”.

23. At this juncture, the only other issue for determination is whether this is an “exceptional case” to warrant a waiver of the time limit. In this regard, the Tribunal has previously stated that an “exceptional case” must be something out of the ordinary, quite unusual, special, or uncommon and that they need not be unique, unprecedented or beyond the applicant's control.²

24. In view of the fact that the Applicant failed to make any submissions on the issue of receivability, the Tribunal can only conclude that this is not an exceptional case to warrant a waiver of the time limit.

Conclusion

25. The Tribunal finds that the Applicant's claim against the non-renewal of his appointment is not receivable due to the fact that:

- (i) The Applicant failed to comply with the 90-day time limit stipulated in art. 8.1 of the Statute; and

² *Morsy* UNDT/2009/036; *Sethia* UNDT/2010/037; *Avina* UNDT/2010/054; *Amarilla* UNDT/2010/184.

(ii) The Applicant failed to establish any exceptional circumstances in his case that would justify a waiver of the time limits in accordance with art. 8.3 of the Statute.

Decision

26. This particular claim is time-barred as a result of the Applicant's failure to file an application with the Tribunal within the period provided by the Rules of Procedure and the Statute of the Tribunal. The Tribunal finds that the Applicant did not pursue his claim diligently and that he failed to provide proof that something out of the ordinary, quite unusual, special, or uncommon prevented him from doing so.

27. In light of the foregoing, the Tribunal concludes that the current Application is not receivable and is therefore rejected.

(Signed)

Judge Vinod Boolell

Dated this 24th day of December 2012

Entered in the Register on this 24th day of December 2012

(Signed)

Jean-Pelé Fomété, Registrar, Nairobi