



Before: Judge Goolam Meeran

Registry: New York

Registrar: Hafida Lahiouel

PRAKASH

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Tamara Shockley, UNICEF

Introduction

1. On 10 January 2013, the Applicant, a former staff member of the United Nations Children’s Fund (“UNICEF”), filed an application contesting the non-renewal of his contract on the grounds of unsatisfactory performance.

2. On 11 January 2013, the New York Registry of the Dispute Tribunal sent a communication to both parties confirming that it received the application on 10 January 2013. The Registry informed the Respondent that the reply to the application was due by 11 February 2013.

3. The Respondent’s reply was duly filed on 11 February 2013. The Respondent contends that the application is not receivable because the Applicant failed to request management evaluation of the contested decision within 60 calendar days of the date of notification of the contested decision and failed to file his application with the Tribunal within 90 calendar days of receiving the Administration’s response to his request for management evaluation. With respect to the merits of the Applicant’s claims, the Respondent denies any unlawful conduct in relation to the decision not to renew the Applicant’s appointment. According to the Respondent, the contested decision was based on unsatisfactory performance reports that were not rebutted by the Applicant. The Respondent submits that the contested decision was taken in accordance with the relevant rules and procedures.

Facts

4. This Judgment is on the preliminary issue of the receivability of the claim. In the circumstances, it is not necessary to go into the factual details of the case except in so far as they relate to the determination of the question of whether the Applicant’s claims are time-barred.

5. The Applicant joined UNICEF Lucknow Field Office, India, in July 2010 on a fixed-term appointment set to expire on 31 July 2012.
6. On or around 22 February 2012, the Chief of the UNICEF Lucknow Field Office, India, informed the Applicant that she would not recommend a renewal of his fixed-term appointment because of two poor performance appraisal reports.
7. On 4 July 2012, the Applicant received a letter from UNICEF New Delhi Office, India, dated 3 July 2012, informing him that his fixed-term appointment would not be renewed upon its expiration on 31 July 2012.
8. On 26 July 2012, the Applicant requested a management evaluation of the contested decision. He provided further particulars and documents to UNICEF on 30 August and 25 September 2012.
9. On 4 September 2012, the Chief of the Policy and Administrative Law Section, Division of Human Resources, UNICEF, confirmed that the Applicant's request for management evaluation had been received and provided the following information regarding further appeal steps:

If you are not satisfied with the outcome of the review or if you do not receive a response by 15 October 2012, you may file an application with the United Nations Dispute Tribunal within ninety calendar days from the date on which you received the outcome of the management evaluation or from the date of expiration of the deadline specified above, whichever is earlier (United Nations Staff Rule 11.4(a)).

10. The Deputy Executive Director of UNICEF responded to the Applicant's request for management evaluation by letter dated 1 October 2012, affirming the contested decision. The Applicant received this letter on 4 October 2012. The Deputy Executive Director's letter reminded the Applicant that "any further recourse against the contested decision lies with the United Nations Dispute Tribunal and must be initiated within 90 calendar days from the date of receipt of this letter in accordance with [s]taff [r]ule 11.4(a)".

11. On 10 January 2013, the Applicant filed his application with the Tribunal.

Consideration

Request for management evaluation

12. The Tribunal does not accept the Respondent's contention that the time for requesting management evaluation began to run from 22 February 2012, when the Applicant was informed of the recommendation that his fixed-term appointment would not be renewed. It should be noted that this was only a recommendation. There was no certainty that this recommendation would inevitably be adopted or accepted. However, when the Applicant received the written notification of the non-renewal of his appointment, dated 3 July 2012, the time for requesting management evaluation started to run. Having filed his request for management evaluation two weeks later, the Applicant complied with the applicable time limit.

Application to the Tribunal

13. Article 8.1(d) of the Tribunal's Statute provides that, in cases in which a request for management evaluation is necessary, a staff member is required to file his or her application with the Tribunal within 90 calendar days of receipt of the response by management to the request for management evaluation.

14. Accordingly, the Applicant was required to file his application to the Tribunal within 90 calendar days from 4 October 2012, when he received the response to his request for management evaluation. Accordingly, his application should have been filed by Wednesday, 2 January 2013.

15. Although the Applicant dated his application with the date of "2 January 2013", an examination of the Tribunal's electronic records indicates that the application was filed on Thursday, 10 January 2013, as was confirmed to both

parties by the New York Registry on 11 January 2013. Therefore, the application was filed eight calendar days after the deadline.

16. As the United Nations Appeals Tribunal stated in *Mezoui* 2010-UNAT-043, time limits are to be enforced strictly. The present application does not refer to any exceptional circumstances that would justify the delayed filing and that would warrant a waiver or extension of the applicable time limits (*Shakir* 2010-UNAT-056, *Diagne et al.* 2010-UNAT-067). Accordingly, the Tribunal finds the application time-barred.

Conclusion

17. The application is not a receivable and is dismissed.

(Signed)

Judge Goolam Meeran

Dated this 12th day of February 2013

Entered in the Register on this 12th day of February 2013

(Signed)

Hafida Lahiouel, Registrar, New York