



Before: Judge Vinod Boolell
Registry: Nairobi
Registrar: Abena Kwakye-Berko, Acting Registrar

AL-BADRI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Josianne Muc, UNDP

Introduction

1. The Applicant is a former staff member of the United Nations Development Programme (UNDP). She filed the current application with the Registry of the United Nations Dispute Tribunal (the Tribunal) in Nairobi to contest: (i) the sudden verbal decision to relocate her post from Amman to Baghdad without any notice and the subsequent abolition of her post in Amman; and (ii) the rejection of her request by the Country Office to postpone her entry on duty (EOD) date for a post in Baghdad to the end of March 2011.

Facts

2. The Applicant joined the UNDP Country Office in Iraq (UNDP Iraq) on 21 December 2000 on a fixed-term appointment (FTA). In January 2003, she was appointed as a Human Resources Associate with UNDP Iraq at the GS-6 level. After the bombing of the United Nations Headquarters in Baghdad, Iraq, in 2003, the Applicant and other UNDP Iraq staff members were evacuated in December 2003 to Amman, Jordan.

3. On 1 January 2004, she was appointed as an Operations Associate with UNDP Iraq at the GS-7, step 2 level.

4. By a letter dated 31 October 2005, the Country Director, UNDP Iraq, informed the Applicant that since UNDP was not in a position to return to its office in Iraq in the near future, there was no longer an Iraq duty station for the Country Office. Thus UNDP management had decided that the new duty station for UNDP Iraq would be Jordan. He further informed her that as a result all the local posts in Iraq, including hers, would be abolished as of 31 January 2006 and would be replaced as of 1 February 2006 by the same local posts at the new duty station, under the Jordan local conditions.

5. The Applicant was then offered the same post in Jordan that she had encumbered as a local staff member of the Iraq duty station. She accepted the offer and effective 1 February 2006 she held the position of Operations Associate at the G-7 level with UNPD Iraq in Amman.

6. By an email dated 5 March 2009¹, the then Resident Representative provided a synthesis of the key issues discussed at a UNDP 2009 Retreat² to all UNDP Iraq staff members. He informed the staff that the United Nations system was on a “gradual but sure path back to Iraq” and that all efforts were being made to increase United Nations agencies presence both in Baghdad and in the field offices. In this respect, he: (i) urged that new personnel be recruited on the understanding that they would be based in Iraq; and (ii) indicated that while a sizeable Country Office would remain in Amman for some time, he, along with UNDP senior management and senior project personnel, would be spending more time in Iraq.

7. The Country Director wrote to the Deputy Resident Representative (Operations), UNDP Iraq, on 8 March 2010 requesting that the Applicant’s post be advertised with the duty station as Baghdad, Iraq. He explained that this move was necessary because: (i) UNDP Iraq did not have any core operations staff in Baghdad; (ii) the increase of project activities and coordination functions in Baghdad; and (iii) the need to provide administrative assistance to the large number of staff going on missions from Amman to Baghdad.

8. A Human Resources Specialist from the Human Resources Unit (HRU) verbally informed the Applicant of the Country Director’s decision to relocate her post to Baghdad on 11 March 2010. Upon her request, a copy of the Country Director’s email was shown to her.

9. The Country Director informed all UNPD Iraq staff members, by an email dated 18 March 2010, of the United Nations Country Team’s (UNCT) decision to

¹ The Resident Representative provided all UNDP Iraq staff members with a copy of the Retreat Report on 29 April 2009.

² This was a UNDP Iraq retreat, which was held from 24 – 26 February 2009.

freeze all Amman-based future recruitments and to shift toward Iraqi nationals being posted in Iraq. He advised staff to expect that in the near future certain positions, including that of Operations Associate would be Baghdad-based.

10. The Deputy Resident Representative (Operations) informed all UNDP Iraq staff members on 21 March 2010 that the positions of Programme Specialist, Procurement Analyst, Operations Associate and Administrative Associate would be based in Iraq with immediate effect. This was followed up by an email from the Country Director dated 29 March 2010 to all UNDP Iraq staff members reiterating the relocation of the four positions to Baghdad.

11. Subsequently, the Resident Representative informed the Applicant by a letter dated 26 April 2010 that her post in Amman would be abolished and that a new post at the same level would be established in Baghdad with new terms of reference. The Applicant was further informed that the new post in Baghdad would be advertised for competitive selection and that if she was not selected for the new post by 31 August 2010 she would be separated effective 1 September 2010.

12. According to the Applicant's submissions, she did not apply for the new post in Baghdad but rather applied for two positions based in Amman. She was informed on 9 June 2010 and 15 July 2010 that her applications for these positions were not successful.

13. By a letter dated 8 August 2010 addressed to the Director of the UNDP Office of Human Resources, Bureau of Management (OHR/BOM), the Applicant requested management evaluation of the decision to abolish and transfer her post from Amman to Baghdad. She received communication from the Chief of the Bureau of Management Directorate that a reply to her request would be sent to her by 22 September 2010.

14. In a response dated 25 August 2010, the Officer-in-Charge (OIC), OHR/BOM, confirmed the abolishment of the Applicant's post in Amman as of 1 October 2010 and offered the Applicant, without resort to a competitive recruitment

process, the post in Baghdad as it was the same post she was encumbering in Amman. The OIC informed the Applicant that she had up until 30 September 2010 to either accept or decline the offer and that if she chose to decline she would be separated from UNDP effective 31 December 2010.

15. On 22 September 2010, the Applicant sent an email to the Bureau of Management requesting suspension of her request for management evaluation pending efforts to informally resolve the matter with the assistance of the Ombudsman.

16. During a meeting with the Deputy Director/OHR on 23 September 2010, the Applicant requested that her application for the Procurement Analyst post in Baghdad, which she had submitted after the application deadline due to pressing family/personal matters, be considered. Consequently, she was offered the post on 12 October 2010 and asked to communicate her acceptance by 25 October 2010.

17. The Applicant wrote to the Deputy Director/OHR on 20 October 2010 seeking clarification as to whether the Entry on Duty (EOD) date was negotiable in light of the security situation in Iraq. On 25 October 2010, she communicated her initial acceptance of the offer.

18. On the same day, the Deputy Director/OHR informed the Applicant that the United Nations Department of Safety and Security (UNDSS) had authorized the presence of national staff in Baghdad and that UNDP already had national staff there. On 26 October 2010, UNDP Iraq informed the Applicant that the EOD date for the Procurement Analyst post was as soon as possible but no later than 1 December 2010.

19. On 27 October 2010, the Applicant requested that the EOD be changed to the end of March 2011 due to critical family commitments that she needed to deal with. UNDP Iraq subsequently informed her that her request did not meet the immediate needs of the Country Office but that they were consulting with OHR on the way forward. On 4 November 2010, the Deputy Director/OHR informed the Applicant that due to the needs of the Iraq Country Office, the incumbent was expected to take

up the functions of the post as soon as possible. The Deputy Director then requested that the Applicant provide further clarification to enable her to assess when the Applicant would be able to take up the post.

20. The Applicant provided the Deputy Director with additional information on 11 November 2010 and on 12 November 2010, the Deputy Director advised her to consult with UNDP Iraq on the way forward.

21. The Applicant declined the offer on 16 November 2010 and on 23 December 2010; she applied for Special Leave Without Pay for a period of one year from 1 January 2011 to 31 December 2011, which was approved by OHR/BOM.

22. On 29 March 2011, the Applicant requested that OHR/BOM resume management evaluation of her initial 8 August 2010 request. In a response dated 13 May 2011, the Applicant was informed by the Assistant Administrator and Director/BOM that her 8 August 2010 request for management evaluation was, *inter alia*, time-barred and therefore not receivable.

Procedural history

23. The Applicant filed the current Application on 7 August 2011, which was served on the Respondent on 19 September 2011. On 18 October 2011, the Respondent filed a Reply and a motion for summary judgment. Both were served on the Applicant the same day.

24. In his Reply, the Respondent argued that the claims raised by the Applicant in her Application are not receivable *ratione materiae* and *ratione temporis*. In view of the foregoing, the Respondent requested that the Tribunal grant summary judgment in his favor.

25. By Order No. 139 (NBI/2013), the Tribunal directed the Applicant to file a response on the issue of receivability and on the motion for summary judgment on or before 3 July 2013, which she did.

Issues

26. In the Applicant's 29 March 2011 email to OHR/BOM, she sought resumption of her 8 August 2010 request for management evaluation and also sought management evaluation of UNDP Iraq's decision to take away her United Nations Laissez-Passer (UNLP) on 10 January 2011. However, since she did not raise the issue of the confiscation of her UNLP in her Application, the Tribunal will not consider this issue but will only canvass the receivability of the two claims she detailed in her Application in this judgment.

Parties' submissions*Respondent's submissions*

27. With respect to the decision to abolish the Applicant's post in Amman, Jordan, and to create a new post at the same level in Baghdad, Iraq, the Respondent submits that the Applicant's request for management evaluation is time-barred and therefore not receivable. The Respondent contends that since the Applicant was informed verbally of the decision on 11 March 2010 and in writing on 26 April 2010 she should have filed her request for management evaluation no later than 10 May 2010 (60 days from the verbal notification) or no later than 25 June 2010 (60 days from the written notification). However, she did not request management evaluation until 8 August 2010. Thus, her request failed to comply with staff rule 11.2(c).

28. With respect to the decision not to delay the Applicant's EOD for the Procurement Analyst post until the end of March 2011, the Respondent submits that the Applicant failed to request management evaluation of this decision as required by staff rule 11.2(a). In this respect, the Respondent asserts that the Applicant's request for management evaluation dated 8 August 2010, related solely to the decision to abolish her post in Amman and to create a similar post in Baghdad. On 29 March 2011, she requested that her initial management evaluation request be resumed based

on new claims, including the EOD claim, which were not related to her initial request. Thus, this claim cannot be considered as part of her request for management evaluation as it occurred after she filed her initial request.

29. Additionally, the Respondent argues that even if the 29 March 2011 email may be considered as a “new” request for management evaluation contesting the 27 October 2010 decision not to delay the EOD date, the request would be time-barred as the Applicant should have filed within the deadline prescribed in staff rule 11.2(c), which should have been no later than 26 December 2010.

Applicant’s submissions

30. With respect to the decision to abolish her post in Amman, Jordan, and to create a new post at the same level in Baghdad, Iraq, the Applicant concedes that her request was late but submits that she, and the other affected staff members, were waiting for corrective action from UNDP Iraq. In this respect, they contacted the Career Transition Unit (CTU) for assistance because they were uncertain of the procedure to be followed. Unfortunately, HRU was either unaware of the proper procedure or merely failed to assist the affected staff.

31. The Applicant made no submissions in relation to the receivability of her challenge against the decision not to delay her EOD for the Procurement Analyst post.

Considerations

Is the Applicant’s challenge against the decision to abolish her post in Amman, Jordan, and to create a new post at the same level in Baghdad, Iraq, receivable?

32. Pursuant to art. 8.1(c) of the Statute of the Dispute Tribunal, the jurisdiction of the Dispute Tribunal can only be invoked in certain cases if a contested administrative decision has been previously submitted for management evaluation. Thus, a mandatory first step for an applicant prior to the submission of an application

to the Dispute Tribunal is to request a management evaluation of the contested administrative decision.

33. Staff rule 11.2(a) provides in relevant part that a staff member wishing to formally contest an administrative decision shall, as a first step, submit a request for management evaluation to the Secretary-General.

34. Further, staff rule 11.2(c)³ provides that:

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.

35. In the present matter, the Tribunal holds that the sixty calendar days started running from the date the Applicant received the formal written notice of abolishment of post on 26 April 2010. Thus, she should have filed her request for management evaluation no later than 25 June 2010. The record shows, however, that she did not request management evaluation until 8 August 2010, about 6 weeks after the stipulated deadline. The Applicant has conceded however that she did not file her request for management evaluation in a timely manner.

36. Nevertheless, even though she was late in filing her request, OHR/BOM accepted it without raising the issue of receivability at the outset but rather engaged her on the merits of her claim in a letter dated 25 August 2010. Additionally, by a letter dated 22 September 2010, the Assistant Administrator and Director of BOM confirmed an agreement with the Applicant to suspend her request for management evaluation “until further notice”.

37. Thus, the issue for determination now is whether the BOM Directorate waived the management evaluation deadline.

³ ST/SGB/2010/6 (Staff regulations of the United Nations and provisional staff rules).

38. BOM informed the Applicant on 16 August 2010 that a reply to her request would be sent by 22 September 2010. It is worth noting that the OHR/BOM letter was received by the Applicant on 25 August 2010, approximately two and a half weeks after her request for management evaluation. Thus it was sent to her within the deadline for a response from the Administration.

39. Paragraph 2 of the 25 August 2010 letter indicated that OHR/BOM had “carefully reviewed” the Applicant’s arguments and the content of the 26 April 2010 notification (the administrative decision) and that OHR/BOM wanted to “share the result of [their] analysis with [the Applicant]”. The letter then went on to provide the Applicant with a brief history of the contested administrative decisions and the reasons for them.

40. In the same correspondence, OHR/BOM offered the Applicant the new post in Baghdad with a start date of 1 October 2010 and informed her that her post in Amman would be abolished on 1 October 2010 instead of 1 September 2010. She was given up until 30 September 2010 to accept or decline the offer of employment in Baghdad. In closing, OHR/BOM stated the following:

We hope the present letter addresses the concerns you raised in your letter of 8 August 2010. We trust your impression that the Country Office management “*does not want to see certain staff in the office...*” will dissipate, once you realize that actually you are offered the post established in Baghdad in replacement of your post in Amman, in the same way as in 2005 you were offered the post in Amman in replacement of your post in Baghdad.

...

We note that the subject of your email of 8 August to which your letter was attached is “*Appeal for Management Evaluation*”. If, as we hope, the present letter addresses your concerns, please kindly withdraw your request for management evaluation in writing so that the case be considered closed from a legal viewpoint.

41. After discussions with the UNDP Legal Office regarding suspension of her request for management evaluation, the Applicant sent an email on 17 September 2010 requesting said suspension. On 22 September 2010, the Assistant Administrator

and Director of BOM suspended the Applicant's request for management evaluation "until further notice" pending efforts at informally resolving the matter with the assistance of the Ombudsman and informed her as follows:

Should the issues not be resolved to your satisfaction, you will, of course and at any stage in the future, be at liberty to ask that the formal process be resumed. Should this occur, you will receive a new acknowledgement of receipt from my Office, together with an indication of the date by which you may expect a reply.

I hope that the efforts that are currently being made will bear fruit, and thank you for your engagement in this process.

42. After meeting with the Deputy Director of OHR/BOM on 23 September 2010, the Applicant requested that the 30 September 2010 deadline provided in the 25 August letter be extended for an additional 2 weeks i.e. up until approximately 14 October 2010.

43. Before the Applicant could provide the Administration with a response to the 25 August 2010 offer, UNDP Iraq offered her, on 12 October 2010, the post of Procurement Analyst, which had been newly created in Baghdad and was at a higher level than the post the Applicant had been initially offered in Baghdad. She was asked to provide a response to this offer by 25 October 2010. After the parties reached a stalemate on the issue of the Applicant's EOD date, she wrote to UNDP Iraq on 16 November 2010 and declined the offer for the Procurement Analyst post in Baghdad.

44. While there were two offers outstanding, it is worth noting that the Applicant did not provide a response to the Administration in relation to the offer contained in the 25 August 2010 letter. The Administration also did not follow up on the earlier offer or on the Applicant's request for management evaluation until she requested reinstatement of her request on 29 March 2011.

45. The Tribunal finds that the Respondent effectively waived the deadline for management evaluation and handed the Applicant the discretionary authority to decide when to litigate her matter by engaging her on the merits of her tardy claims

via the letter of 25 August 2010 and by suspending her request for management evaluation via the letter of 22 September 2010 “until further notice” with an undertaking that she could request for resumption of the formal process “at any stage in the future”, should the issue not be resolved to her satisfaction.

46. In view of the foregoing, the Tribunal holds that the Respondent is estopped from asserting that the Applicant’s challenge against the decision to abolish her post in Amman, Jordan, and to create a new post at the same level in Baghdad, Iraq, is now time-barred.

47. Accordingly, this claim is receivable.

Is the Applicant’s challenge against the decision not to delay her EOD for the Procurement Analyst post until the end of March 2011 receivable?

48. Although the Tribunal provided the Applicant with the opportunity to provide comments on the receivability of her challenge against the decision not to delay her EOD for the Procurement Analyst post⁴, she made no submissions in this regard in her filing dated 20 June 2013.

49. The Tribunal will therefore make a determination on this claim based on the parties’ pleadings and the documents submitted in support thereof. The following issues will be canvassed: (i) whether the Applicant requested management evaluation of the decision; and if so (ii) whether she did so within the delay stipulated by staff rule 11.2(c).

50. On 27 October 2010, the Applicant requested that the EOD be changed to the end of March 2011. On the same day, UNDP Iraq subsequently informed her that her request did not meet the immediate needs of the Country Office but that they were consulting with OHR on the way forward. On 4 November 2010, the Deputy Director/OHR reiterated that due to the needs of the Iraq Country Office, the incumbent was expected to take up the functions of the post as soon as possible. She

⁴ See Order No. 139 (NBI/2013).

subsequently advised the Applicant to consult with UNDP Iraq on the way forward. Without any further consultations with UNDP Iraq, the Applicant declined the offer on 16 November 2010.

51. In her email dated 29 March 2011, entitled “Re Suspension of Request for Management Evaluation”, the Applicant specifically requested management evaluation of the decision to seize her UNLP, which was an issue that had not initially been raised in her 8 August 2010 request. No such request was made in relation to the decision not to extend her EOD until March 2011. She stated the following in relation to the EOD decision:

Dear Ms. JDW,

I am writing today to seek your kind assistance to:

1. Resume the formal process for my request for Management Evaluation in light of the following facts that took place since the suspension of the request:
 - a. The offer of the Procurement Analyst post in Baghdad (dated 12th Oct 2010) did not meet my satisfaction because the Office failed to provide a response to my deep concerns on the security situation and if any security arrangements were in place if I return to Baghdad.
 - b. The disapproval of my request to extend the EOD in Baghdad Office (dated 27th Oct 2010), if I accept the above post, until end of March 2011 because I have compelling family circumstances [...]. The above two facts resulted in declining the offer for the mentioned post.

52. Thus, in actuality, she only raised the issue of the EOD to provide context and a reason for her request to the Administration to resume the management evaluation of her 8 August 2010 request. Based on the existing evidence, the Tribunal finds that the mere mention of the EOD decision in the Applicant’s 29 March 2011 email cannot be construed as a request for management evaluation.

53. Thus, the Applicant failed to comply with art. 8.1(c) of the Tribunal’s Statute and as such, this claim is not receivable.

54. In view of the fact that the Applicant did not request management evaluation of the decision, there is no need for the Tribunal to examine whether she complied with the delay stipulated by staff rule 11.2(c).

Decision

55. The Tribunal concludes that the Applicant's challenge against the decision to abolish her post in Amman, Jordan, and to create a new post at the same level in Baghdad, Iraq, is receivable and will therefore proceed to a determination on the merits.

56. The Tribunal further concludes that the Applicant's challenge against the decision not to delay her EOD for the Procurement Analyst post until the end of March 2011 is not receivable. Accordingly, this claim is dismissed in its entirety.

(Signed)

Judge Vinod Boolell
Dated this 15th day of August 2013

Entered in the Register on this 15th day of August 2013

(Signed)

Abena Kwakye-Berko, Acting Registrar, Nairobi