



Before: Judge Goolam Meeran

Registry: New York

Registrar: Hafida Lahiouel

FAYEK

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:

Self-represented

Counsel for Respondent:

ALS/OHRM, UN Secretariat [Not served]

Introduction

1. The Applicant is contesting the Administration's decision not to disclose to her the results of an investigation into alleged threatening messages left on her voicemail.

Facts

2. On 5 May 2013, the Applicant requested management evaluation of the decision "not to share hard copy and details of an investigation report on threatening phone messages left on [her] Office Vice [sic] mail". Following the receipt of further communications from the Applicant, the Management Evaluation Unit ("MEU") informed her that the 30-day period for evaluating the administrative decision will begin to run from the date they received her completed request, i.e., 7 May 2013. Accordingly the relevant response period expired on 6 June 2013 because the MEU did not respond to her request for management evaluation within period of 30 days as required.

3. On 26 June 2013, the MEU informed the Applicant that upon reviewing her request for management evaluation they had determined that her request was not receivable because it was time-barred.

4. On 23 and 24 September 2013, the Applicant contacted the Dispute Tribunal via email informing it that she was experiencing technical problems in filing her application via the Tribunal's electronic filing system and enquired as to whether the Tribunal could extend the applicable time limits or would accept her application if it was submitted via email.

5. On 24 September 2013, the Tribunal informed the Applicant that its technical support service was available to assist her in resolving any technical difficulties she was experiencing in completing her filings. That same day the technical support

service provided the Applicant with assistance regarding the technical difficulties she was experiencing.

6. On 25 September 2013, the Applicant requested a ten day extension of time to file an application due to the technical problems she was encountering in filling her application within the Tribunal's electronic case management system ("CCMS"). That same day, the Tribunal's technical support service contacted the Applicant and assisted her in creating an electronic filing account.

7. On 26 September 2013, the Tribunal informed the Applicant that due to the technical difficulties she was experiencing in using CCMS it was, as a courtesy, uploading her request for an extension of time to file into CCMS on her behalf. The Tribunal further informed the Applicant that an order in response to her request would follow shortly. The Applicant responded to the Tribunal's notice that same day expressing her appreciation for what she described as "invaluable technical support".

8. By Order No. 234 (NY/2013), dated 26 September 2013, the Tribunal refused the Applicant's request for an extension of time to file by stating that her request did not identify any exceptional circumstances. The Tribunal further stated that should she continue to experience technical difficulties in filing her application, she should contact the Registry and file her application via-email.

9. On 30 September 2013, the Tribunal's technical support service contacted the Applicant to follow-up on whether she was continuing to experience technical difficulties. The Applicant stated that she would file her application the following day, 1 October 2013. She did not do so.

10. On 9 October 2013, the Applicant filed this application. It was 35 days out of time.

Consideration

Applicable law

11. Article 8 of the Statute of the Dispute Tribunal provides that:
 1. 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;
12. In accordance with art. 7 of the Rules of Procedure of the Dispute Tribunal an application shall be receivable if:

Article 7 Time limits for filing applications

1. Applications shall be submitted to the Dispute Tribunal through the Registrar within:
 - (a) 90 calendar days of the receipt by the applicant of the management evaluation, as appropriate;
 - (b) 90 calendar days of the relevant deadline for the communication of a response to a management evaluation, namely, 30 calendar days for disputes arising at Headquarters and 45 calendar days for disputes arising at other offices; or
 - (c)
- ...
5. In exceptional cases, an applicant may submit a written request to the Dispute Tribunal seeking suspension, waiver or extension of the time limits referred to in article 7.1 above. Such request shall succinctly set out the exceptional circumstances that, in the view of the applicant, justify the request. The request shall not exceed two pages in length.

...

Application to the Tribunal

13. Article 8.1(d)(i) 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 from the expiry of the relevant response period for the management evaluation if no response to the request was provided.

14. Although the Applicant has previously filed claims, and may be deemed to be aware of applicable time limits, the Tribunal has decided to set out fully the relevant legal provisions at paragraph 11 so that the Applicant will understand the legal requirements which preclude the Tribunal from considering the substantive merits of her application in this case.

15. Taking into consideration that the MEU received the Applicant's request for management evaluation on 7 May 2013, the Applicant was required to file her application with the Tribunal within 90 calendar days from 6 June 2013, the date when a response to her request for management evaluation was due. More specifically, the Applicant was required to file her appeal by 4 September 2013. The fact that the MEU sent a response to her request for management evaluation on 26 June 2013, after the 30 days time limit under art. 8.1(d)(i)(b) of the Tribunal's Statute and art. 7.1(b) of the Tribunal's Rules of Procedure does not have the effect of extending the relevant response period.

16. It is clear from the facts that the Applicant did not submit an appeal with the Dispute Tribunal within the required time limit.

17. The Tribunal notes that, taking into consideration that her request for an extension of time to file was denied, and aside from the fact that her request was submitted after the expiry of her deadline to file her application, the Applicant would also not be able to sustain the argument that she filed her application with the Tribunal by 24 September 2013, namely within 90 calendar days of her receipt of the response from the MEU.

Conclusion

18. The application is not receivable and is dismissed.

(Signed)

Judge Meeran Goolam

Dated this 11th day of October 2013

Entered in the Register on this 11th day of October 2013

(Signed)

Hafida Lahiouel, Registrar, New York