



Before: Judge Goolam Meeran

Registry: New York

Registrar: Hafida Lahiouel

ENAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
ALS/OHRM, UN Secretariat

Introduction

1. On 23 April 2014, the Applicant, a staff member of the Department of General Assembly and Conference Management (“DGACM”), whose office is located in the Albano building (305 East 46th Street, New York), submitted an application, together with annexes comprising almost 350 pages, contesting two decisions of 4 and 16 April 2013 to relocate DGACM staff members to the Albano building and refusing to return staff members already accommodated in the Albano building to the renovated United Nations Secretariat building.

2. The Applicant submits that, on 16 May 2013, he made a request for management evaluation of the contested decisions. On 20 May 2013, the Applicant also submitted an application for suspension of action of the two contested decisions (Case No. UNDT/NY/2013/088). On 22 May 2013, the Tribunal issued *Enan* Order No. 130 (NY/2013), rejecting the application for suspension of action. On 28 January 2014, the Applicant received, from the Management Evaluation Unit (“MEU”), response dated 27 January 2014 to his 16 May 2013 request for management evaluation.

3. In view of the fact that the application appears manifestly not receivable due to the Applicant’s failure to comply with the requisite time limits, the Tribunal did not seek a reply from the Respondent.

Considerations

4. Pursuant to art. 8.1 of the Statute of the Dispute Tribunal, an application shall be receivable if it is filed within the following deadlines (emphasis added):

Article 8

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;**

(ii) In cases where a management evaluation of the contested decision is not required, within 90 calendar days of the applicant's receipt of the administrative decision;

5. Article 7.1 of the Rules of Procedure of the Dispute Tribunal states as follows (emphasis added):

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) 90 calendar days of the receipt by the applicant of the administrative decision in cases where a management evaluation of the contested decision is not required.

6. Staff rule 11.2(d) provides as follows (emphasis added):

Rule 11.2

Management evaluation

...

(d) The Secretary-General's response, reflecting the outcome of the management evaluation, **shall be communicated**

in writing to the staff member within 30 calendar days of receipt of the request for management evaluation if the staff member is stationed in New York, and within 45 calendar days of receipt of the request for management evaluation if the staff member is stationed outside of New York. The deadline may be extended by the Secretary-General pending efforts for informal resolution by the Office of the Ombudsman, under conditions specified by the Secretary-General.

7. Staff rule 11.4(a) on the United Nations Dispute Tribunal provides as follows (emphasis added):

Rule 11.4

United Nations Dispute Tribunal

(a) A staff member may file an application against a contested administrative decision, whether or not it has been amended by any management evaluation, with the United Nations Dispute Tribunal within 90 calendar days from the date on which the staff member received the outcome of the management evaluation or from the date of expiration of the deadline specified under staff rule 11.2(d), **whichever is earlier**.

8. The Applicant states that he was notified of the contested decisions on 4 and 16 April 2013. He requested management evaluation of the decisions on 16 May 2013, in compliance with the applicable deadline.

9. The Applicant being stationed in New York, the expiry of the 30-day deadline for the Secretary-General to communicate his response to the Applicant's request for management evaluation was 17 June 2013.

10. Pursuant to the Statute and the Rules of Procedure of the Tribunal, the 90-day time limit for filing an application before the Dispute Tribunal commenced on 18 June 2013 and the deadline for such filing fell on 16 September 2013. The application was filed approximately seven months later on 22 April 2014.

11. The Dispute Tribunal and the United Nations Appeals Tribunal have consistently stressed the importance of complying with statutory deadlines, including

that of MEU, which is paramount to ensuring certainty and the expeditious disposal of disputes in the workplace.

12. The Tribunal notes that the MEU response was sent to the Applicant on 27 January 2014 and received by him on 28 January 2014, well beyond the MEU statutory deadline of 17 June 2013 and well beyond the subsequent 90-day deadline of 16 September 2013 for the filing of his application before the Tribunal.

13. The timing of the MEU response is governed by staff rule 11.2(d), which states that the Secretary-General's response, reflecting the outcome of the management evaluation, shall be communicated in writing to the staff member within 30 calendar days of receipt of the request for management evaluation if the staff member is stationed in New York.

14. The use of the word "shall" in the rule requires the Secretary-General to meet the deadline. Under staff rule 11.4(a), a staff member has the option to file an application before the Dispute Tribunal within 90 calendar days from the date on which the staff member received the outcome of the management evaluation or from the date of expiration of the deadline specified under staff rule 11.2(d), whichever is earlier. The use of the words "whichever is earlier" as well as the expressly stated period of 30 or 45 calendar days to provide an MEU response confirms that the maximum time for the Secretary-General to communicate an MEU response is 30 or 45 days.

15. The Staff Rules do not contemplate the possibility that the MEU may fail to comply with the time limit and may submit a response beyond the 30 or 45 day prescribed period. It would appear that the staff rule was formulated deliberately in order to give effect, in a tangible and practical form, to the policy objective of having a strict deadline for the MEU phase so that there is clarity and certainty in achieving the just and expeditious disposal of workplace disputes. It is clear that decisions of the MEU that exceed the time limits imposed on their role and functions are

inconsistent with the policy and objectives of the formal system of internal justice in the United Nations.

16. Article 8.1(d)(i)(a) of the Tribunal’s Statute states that an application before the Tribunal is receivable if the application is filed within 90 days of the receipt of the MEU response. Article 8.1(d)(i)(b) of the Statute provides that the Secretary-General’s deadline to communicate an MEU response shall be 30 or 45 calendar days from the date of the request for management evaluation. The use of the word “shall” in art. 8.1(d)(i)(b) shows that the Secretary-General’s deadline to communicate a response within the specified delay is strict.

17. The application was filed on 23 April 2014, approximately seven months after the expiration of the deadline of 16 September 2013. The belated letter from the MEU—which missed its deadline by more than seven months, going well beyond even the deadline for the Applicant’s filing before the Tribunal—did not reset the time clock for the filing of the present application.

18. The Tribunal finds that the Applicant has provided no exceptional circumstances warranting suspension/waiver/extension of time for the filing of an application.

Judgment

19. The application is not receivable and is dismissed.

(Signed)

Judge Goolam Meeran

Dated this 25th day of April 2014