



Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

AWAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Salim U. Shaikh

Counsel for Respondent:

Bart Willemsen, UNICEF

Introduction

1. By application filed on 22 July 2014, the Applicant contests the “[United Nations Children’s Fund (“UNICEF”)] failure in its obligations as enshrined in the policy guidelines of ST/AI/299 read with ST/SGB/198 to provide safety and protection to functional immunity of staff members, and as given under the 1946 Geneva Convention”.

Facts

2. The Applicant entered into the service of UNICEF as a Construction Specialist, at the National Officer Level, on 26 November 2007. He retired on 30 April 2012.

3. During 2008, after a competitive bidding process, UNICEF contracted a construction company called Michigan Climax Builders (“MCB”) for the construction of 430 transitional shelter schools in earthquake affected areas of Pakistan. The Applicant was charged with overseeing and monitoring the MCB contract on behalf of UNICEF.

4. Since MCB did not comply with the terms and conditions of the contract, the UNICEF Representative, Pakistan, informed the Chief Executive Officer (“CEO”), MCB, by memorandum of 3 May 2010 that in view of MCB failure to perform, UNICEF had decided to terminate the contract with a 14-day written notice. In a later memorandum, the UNICEF Deputy Representative, Pakistan, requested the CEO, MCB, to pay back monies he owed to UNICEF.

5. On 18 February 2011, the Applicant was arrested by the local police while on his way to the Office and despite having showed his identity as a United Nations staff member. The arrest seems to have been triggered by what appeared to be a fraudulent complaint filed against the Applicant upon the instruction of the CEO, MCB, who blamed the Applicant for the termination of the contract by UNICEF. It also seems that with the assistance of colleagues and legal aid, the Applicant was granted bail by the court.

6. On the same day, the Pakistan Country Office (“PCO”), UNICEF, sent a *Note Verbale* to the Pakistan Ministry of Foreign Affairs (“MOFA”), requesting it to advise the police to approach the staff member through the MOFA instead of taking him directly into custody.

7. According to the Respondent, the PCO sent another *Note Verbale* to the MOFA on 9 March 2011, stressing that as a United Nations staff member, the Applicant was immune from legal proceedings and requesting it, *inter alia*, to inform the relevant law enforcement authorities to respect the privileges and immunities of the Organisation and of its officials.

8. The Applicant was nevertheless subjected to criminal and civil proceedings in national court. On 2 June 2011 and 6 April 2012, the Applicant sent notes to UNICEF, requesting reimbursement of the expenses incurred in view of these legal proceedings. UNICEF subsequently reimbursed the Applicant the fees he had incurred into.

9. According to the Respondent, the Applicant informed the PCO, UNICEF, by emails of 12 and 28 July 2012 that he had been acquitted from all criminal charges and that the civil complaint against him had been withdrawn.

10. In an email of 4 December 2013, and in response to a communication from the Applicant, the Chief of Operations, UNICEF, Pakistan, thanked the Applicant “for sharing the good news” and noted for the record that all court cases against him had now been completely closed.

11. On 24 March 2014, the Applicant filed a request for management evaluation against “administrative decision related to vicarious liability on UNICEF”, referring, *inter alia*, to UNICEF alleged lack of protecting him and ensuring that he enjoys immunity as a United Nations staff member, and the failure to report the matter to the Secretary-General.

12. By email of 7 May 2014, the Chief, Policy and Administrative Law Unit, Division of Human Resources, UNICEF, responded to the Applicant’s request for management evaluation, noting that he had failed to identify an administrative

decision hence, that his request could not be entertained. Moreover, he stressed that if UNICEF actions were considered to be one or more implied administrative decisions, the Applicant had failed to respect the statutory 60-day deadline to request management evaluation.

13. The applicant filed the present application on 22 July 2014, and the Respondent filed his reply on 21 August 2014. Pursuant to Order No. 135 (GVA/2014) of 26 August 2014, both parties informed the Tribunal that they had no objection to a judgment being rendered on the papers.

Parties' submissions

14. The Applicant's principal contentions are:

- a. The failure by UNICEF to take protective measures led to him being subjected to an ordeal that started on 18 February 2011 and ended on 20 November 2013;
- b. The "inaction on the part of the Respondent in not timely invoking provisions of Charter of the UN, Staff Regulations/Rules, and Geneva Convention did by implication form an administrative decision"; UNICEF "not taking any decision on providing the safety and protection at the workplace and timely inaction on the criminal and civil litigation against the Applicant formed an administrative decision" and, his "deployment...to a hardship and risky environment was an administrative decision [by UNICEF]";
- c. UNICEF was duly informed on 4 December 2013 that the last case before national courts was closed in November 2013 and his application is receivable; his rights should not be denied on the basis of purely technical grounds, and the merits of his application should be examined.

15. The Respondent's principal contentions are:
- a. Since the Applicant failed to identify a contestable administrative decision in his request for management evaluation, UNICEF was correct in dismissing the request, and this imprecision cannot be repaired on appeal;
 - b. The Respondent understands that in the application, the Applicant advances that UNICEF took three (implied) administrative decisions, as follows:
 - i. "the inaction on the part of [UNICEF] in not timely invoking provisions of Charter of the UN, Staff Regulations/Rules, and Geneva Convention";
 - ii. "[UNICEF] not having taken any decision on providing the safety and protection at the workplace and timely inaction on the criminal and civil litigation against the Applicant"; and
 - iii. "the deployment of the Applicant by UNICEF to a hardship and risky environment".
 - c. Without prejudice to the question whether the three above decisions referred to by the Applicant in his application constitute implied administrative decisions, the request for management evaluation was manifestly time-barred, since the Applicant was aware of the alleged inaction prior to the closure of the proceedings before national courts in 2012;
 - d. Even if the assertion that the proceedings before national courts came to a close only in November 2013 were correct, the Applicant's request for management evaluation would still be time-barred.

Consideration

16. The Applicant, in his application, identified the contested decision as "UNICEF failure in its obligations as enshrined in the policy guidelines of

ST/AI/299 read with ST/SGB/198 to provide safety and protection to functional immunity of staff members, and as given under the 1946 Geneva Convention”.

17. As stated above, the Applicant further refers to the “inaction on the part of [UNICEF] in not timely invoking provisions of Charter of the UN, Staff Regulations/Rules and Geneva Convention” and UNICEF “not having taken any decision on providing the safety and protection at the workplace and timely inaction on the criminal and civil litigation against the Applicant” and to his “deployment ... to a hardship and risky environment”.

18. It is not clear from the application what exactly the Applicant wishes to contest. However, in *Massabni* 2012-UNAT-238, the Appeals Tribunal held that:

2. The duties of a Judge prior to taking a decision include the adequate interpretation and comprehension of the applications submitted by the parties, whatever their names, words, structure or content they assign to them, as the judgment must necessarily refer to the scope of the parties’ contentions. Otherwise, the decision-maker would not be able to follow the correct process to accomplish his or her task, making up his or her mind and elaborating on a judgment motivated in reasons of fact and law related to the parties’ submissions.

3. Thus, the authority to render a judgment gives the Judge an inherent power to individualize and define the administrative decision impugned by a party and identify what is in fact being contested and so, subject to judicial review which could lead to grant or not to grant the requested judgment.

19. At the same time, the Appeals Tribunal has repeatedly held that when an Applicant fails to identify in clear and precise terms a specific administrative decision in the application to the Tribunal, the Tribunal is correct in rejecting it as not receivable (*Reid* 2014-UNAT-419; *Planas* 2010-UNAT-049).

20. In the case at hand, no such indispensable administrative decision(s) can be identified. The general reference made to alleged “failure in its obligation ... to provide safety and protection of functional immunity” does not discharge the Applicant from his obligation to clearly specify actions (or omissions), including their dates. In view of above-referenced jurisprudence, the Tribunal therefore

considers that the application must be rejected as irreceivable *ratione materiae* on this ground alone.

21. Even if appealable administrative decision(s) could be identified, it is clear that in submitting his request for management evaluation only on 24 March 2014 relating to issues which, at the very latest, came to an end in November 2013, the Applicant failed to respect the 60-day statutory time-limit to request management evaluation under staff rule 11.2(c). The failure to file a timely request for management evaluation renders the application equally irreceivable, *ratione materiae* (*Egglesfield* 2014-UNAT-402).

Conclusion

22. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

(Signed)

Judge Thomas Laker

Dated this 20th day of October 2014

Entered in the Register on this 20th day of October 2014

(Signed)

René M. Vargas M., Registrar, Geneva