



Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

HUMACKIC

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:

Edwin Nhliziyo

Counsel for the Respondent:

Stephen Margetts, ALS/OHRM

Alister Cumming, ALS/OHRM

Introduction

1. The Applicant serves as an Administrative Assistant at the United Nations Interim Force in Lebanon (UNIFIL) at the FS-5 level. On 8 November 2014, she filed an Application contesting a decision made on 25 April 2014 not to select her for the Temporary Job Opening (TJO) of Contracts Management Assistant at the FS-5 level advertised as TJO/2014/011.

2. The Respondent filed a Reply on 26 December 2014 in which he asserted that the Application is without merit and is not receivable *rationae temporae*.

3. The Tribunal, in accordance with art. 19 of the Tribunal's Rules of Procedure, has determined that an oral hearing is not required in determining the preliminary issue of receivability and will rely on the Parties' pleadings and written submissions.

Procedure

4. On 4 February 2015, by Order No. 046 (NBI/2015), the Applicant was directed to file her submissions in response to the issue of receivability by 3 March 2015.

5. The Applicant filed the said submissions on 3 March 2015.

Facts

6. On 21 March 2014, the temporary position of Contracts Management Assistant was advertised under TJO/2014/011 with a closing date of 28 March 2014.

7. The Applicant applied for the position on 28 March 2014.

8. A two-member interview panel was convened to assess the candidates comprising of the Hiring Manager, a female staff member external to the work unit where the job opening was located and a staff member from Human Resources who served as an *ex officio* member of the panel.

9. The Applicant and seven other staff members applied for the position, took written tests and undertook competency based interviews.

10. On 28 April 2014, the Hiring Manager transmitted the selection memorandum to the Chief Human Resources Officer recommending that the staff member who scored the highest on the written test be selected for the position.

11. On 27 June 2014, the selected candidate declined the position. Another candidate was offered the position but, on 18 July 2014, also declined the offer.

12. Following the second candidate's decision to decline the position, UNIFIL management decided that the position would be filled from the roster by a staff member appointed on a longer basis and that the recruitment would take place from January 2015.

13. By letters dated 26 and 28 May 2014, 12 June 2014 and 25 June 2014, the Applicant requested management evaluation of the decision concerning her non-selection for the position of Contracts Management Assistant (FS-5), TJO/2014/011, to assess the transparency of the selection process and to assess if events she had described in her request for management evaluation had affected her opportunity for career development.

14. On 27 June 2014, the Applicant received an email from the Management Evaluation Unit (MEU) with a letter attached in reference to her management evaluation request (MER). The letter advised the Applicant on the applicable deadlines for submission of her case to the Dispute Tribunal as follows:

Please also note that, pursuant to Staff Rule 11.2 (d), the management evaluation in your case is to be completed within 45 days of receipt of your request, or no later than 9 August 2014. If there is any delay in completing the management evaluation, the MEU will contact you to so advise. In any event, please be advised that, pursuant to Staff Rule 11.4 (a), the 90-day deadline for filing an application to the UNDT, should you wish to do so, will start to run from 9 August 2014, or the date on which the management evaluation was completed, if earlier, unless the deadline has been extended by the Secretary-General to facilitate efforts for informal resolution under the auspices of the Office of the Ombudsman.

15. On 8 November 2014¹, Counsel for the Applicant sent an email to the corporate email address of the Registry of the Dispute Tribunal in Nairobi stating:

I am trying to submit through the efile portal [sic] but it is stuck on SUBMIT file. I will keep trying but I will submit this by email just in case.

16. On 10 November 2014, the Registrar responded to Counsel's email as follows:

The Registry acknowledges receipt of your email of 8 November 2014 entitled "NINA HUMACKIC". Please note that we will record the date of filing as 8 November but will not serve the Application on the Respondent until you have created an account in the e-Filing Portal (CCMS) and have uploaded the documents. We strongly recommend that you seek assistance from CCMS Support by writing to ccms-support@un.org or [...].

17. On 27 November 2014, the Registry served the Application on the Respondent but, by accidental omission, did not indicate the applicable date of receipt of the Application as 8 November 2014.

This serves as confirmation that, **on 27 November 2014**, the Tribunal received an application filed via Lotus Notes from Nina Humackic, which has been assigned to Judge Nkemdilim Izuako under Case No. UNDT/NBI/2014/106.

By this notification, the application has been transmitted to the Respondent in accordance with article 8.4 of the Rules of Procedure.

Pursuant to article 10 of the Rules of Procedure, the Respondent has 30 calendar days from the date of receipt of the application to submit his reply. This reply therefore shall be filed by 5:00 p.m. on 29 December 2014.

All documents relating to these proceedings should be accessed and submitted through the eFiling portal.

Respondent's submissions on receivability

18. On 27 May 2014, the Applicant filed her request for management evaluation.

¹ The Applicant filed her application on a Saturday, which is not a working day for the Registry.

19. On 10 July 2014, the time period for the management evaluation response expired.

20. On 9 October 2014, the time period for filing an Application expired.

21. On 24 November 2014, MEU issued a response. The issuance of the MER has no impact on the deadline for filing the Application for the reason that the time limit for filing the Application had already expired when it was issued.

22. The Applicant missed the 9 October 2014 deadline for filing the Application and, instead, filed the Application late, on 27 November 2014.

23. As the Applicant had filed her Application out of time, the Application is not receivable.

Applicant's submissions on receivability

24. The Applicant filed the request for management evaluation on 26 May 2014.

25. On 28 May 2014, 12 June 2014 and 25 June 2014, the Applicant corresponded with MEU.

26. On 27 June 2014, MEU informed her, inter alia, that she had 90 days from 9 August 2014 to file an application with the Dispute Tribunal.

27. On 5 August 2014, the Applicant sent an email to MEU inquiring about her case but was informed that the case was still in process.

28. On 8 November 2014, the Applicant submitted the present Application. The Applicant submits that she experienced certain technical problems with the Dispute Tribunal's e-filing portal and therefore her Application was uploaded into the e-filing system on 27 November 2014.

Considerations

29. Staff rule 11.2(d) stipulates 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, 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.

30. Staff rule 11.4(a) stipulates that 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.

31. On 26 June 2014, the Applicant was informed by MEU that the 90-day deadline for filing an application to the UNDT, would start to run from 9 August 2014, or the date on which the management evaluation was completed, if earlier, unless the deadline was extended by the Secretary-General to facilitate efforts for informal resolution under the auspices of the Office of the Ombudsman.

32. In view of the foregoing, the Applicant was required to submit her Application to the Tribunal by or before 9 November 2014.

33. The Respondent challenges the receivability of this Application on the grounds that the Applicant missed “the 9 October 2014” deadline for filing the Application and, instead, filed the Application late, on 27 November 2014.

34. Contrary to the Respondent’s submissions, the application was required to be submitted by 9 November 2014 and not by 9 October 2014, which would have afforded the Applicant only 60 calendar days instead of the 90 days stipulated in staff rule 11.4(a). Additionally, the Registry made a clerical error in indicating the date of receipt of the Application as 27 November 2014 when it served the Application on the Respondent. The correct date should have been indicated as 8 November 2014. .

JUDGMENT

35. In view of the foregoing, the Tribunal decides that this Application is receivable.

(Signed)

Judge Nkemdilim Izuako

Dated this 1st day of April 2015

Entered in the Register on this 1st day of April 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi