



Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

BELKHABBAZ

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Elizabeth Gall, ALS/OHRM, UN Secretariat

Introduction

1. On 2 October 2014, the Applicant, a former Legal Officer with the Office of Staff Legal Assistance (“OSLA”), Office of Administration of Justice (“OAJ”), filed an application contesting several decisions. The application was deemed incomplete due to missing supporting documents, and the Applicant was requested by the Tribunal’s Registry in Geneva to complete her submission.

2. On 7 November 2014, the Applicant submitted her amended application through the eFiling portal, along with supporting documents, contesting the denial of free legal assistance, as well as the refusal to issue a United Nations (“UN”) entry badge to her.

Facts

Background

3. As stated by the Applicant, she was placed on sick leave as of 26 March 2013, and on 10 May 2013, she was informed that her fixed-term appointment would not be renewed upon its expiry on 11 June 2013. The Applicant’s appointment was thereafter extended on a monthly basis to allow her to exhaust her sick leave entitlements, and on 4 April 2014 she was separated from service.

4. On 15 August 2013, the Applicant relocated to her home country, the United States, for medical reasons.

Applicant’s request for a UN entry badge

5. As stated by the Applicant, on 10 September 2013, she visited the Identification Unit at the UN Headquarters in New York to request a badge to enter the UN premises and, therefore, to get access to the private medical practitioners located there, but her request was denied. By email of 11 September 2013 addressed to the Director of Office, Office of the Chef de

Cabinet, she explained her situation and requested help, as she had some “upcoming appointments in the Secretariat”.

6. Following an exchange of emails, the Director of Office, Office of the Chef de Cabinet, replied to the Applicant on 18 September 2013 as follows:

We have been in contact with Medical Services, who have confirmed that it is standard practice that if an appointment is made—and access is required (as is often the case when staff come from other duty stations), arrangements are made to have the staff collected at the gate. If you request this from Medical Services, it will, I am sure, be facilitated. If there is a problem in making that arrangement then please let this office know and we will try to assist.

With regard to your general question, I have sought guidance from [the Office of Human Resources Management (“OHRM”)] [...]. My own understanding is that as laid down in ST/AI/387 “Security Arrangements for Admission to United Nations Headquarters”, the general principle is that identification cards are issued to “persons requiring regular access to the Headquarters premises”.

Given your particular circumstances, including that your duty station is Geneva, I had therefore sought information from you as to what the particular requirements were prior to any authorization being given. Should there be such requirements—beyond access to the Medical Services—please let me know so it can be properly considered.

7. After a follow-up inquiry from the Applicant addressed to the Chief, Section II, Human Resources Services, OHRM, the latter informed the Applicant by email of 21 September 2013 as follows:

I note that your appointment was extended solely for the purposes of utilization of sick leave in accordance with Sections 4.9 and 4.10 of ST/AI/2013/1 and that while you are requesting a pass for access to UNHQ New York, your duty station is Geneva.

You have asked about the practice of issuing UN Identification Card for similar cases. I have been in contact with a number of offices and it does not appear that there is any established practice on this matter. I believe that [the Director of Office, Office of the Chef de Cabinet] was quoting from ST/AI/333 and I am of the view that under the circumstances its provisions apply. It was therefore reasonable for [him] to request clarification from you of the purpose for which you would require regular access to UNHQ

prior to a determination being made on whether to request issuance of a pass.

Having said that, there is no intention to in any way restrict your ability to enter the Secretariat when you require to do so. In this regard, as to your appointments with the Medical Service, we feel that the Medical Service should be able to make an arrangement to grant you an access to the premises. We are trying to confirm this with the Medical Service.

I also understand that you are in the process of making an appointment with [your Human Resources Officer in UN New York]. Once we agree to the date and time, we will arrange your access to the FF building at that time.

8. By email of 2 October 2013, the Applicant brought the matter to the attention of the Assistant Secretary-General, OHRM, in the following terms:

I have been denied an entry access badge which I believe is contrary to the usual practice for staff members on sick leave. This has meant that I could not schedule two appointments with medical services due to denial of access to the UNHQ. It has also meant denying me access to the insurance office and other staff-related services.

Furthermore, please note that I repeatedly requested an appointment with my HR officer in NY, Ms. [...], in writing and by leaving more than ten phone messages. [She] not once returned my call or reacted to my request for an appointment. While I was advised by her supervisor that she will be in touch with [me], this did not happen.

I turn to you for your urgent intervention and advice in both securing an access badge in accordance with the rules and practice of the Organization and also to request that I be assigned a different HR officer who can exercise some independence in dealing with my complex situation.

Applicant's request for legal assistance

9. As stated by the Applicant, starting 4 April 2014, and continuing until early May 2014, she had requested on several occasions the assistance of free legal services through OSLA, to which she did not receive any answer.

10. By email of 15 May 2014 under the subject “request for legal assistance—URGENT”, the Applicant requested from the Executive Director (“ED”), OAJ, “legal assistance with three pending cases which are currently at the [Management Evaluation Unit] stage and an additional three cases which [she] intend[ed] to pursue with the [A]ppeals [T]ribunal”, adding that she intended to file “at least one additional case in relation to [her] separation which is not yet before the [MEU]”.

11. On 23 May 2014, the ED/OAJ replied to the Applicant as follows:

It would be a conflict of interest for OSLA to advise or represent you.

In response to one of your previous requests for OSLA representation, it was suggested you contact Mr. [...], President of the [International Criminal Tribunal for the former Yugoslavia, “ICTY”] Association, with respect to *pro bono* counsel. You will recall that my office had approached him on a no-name basis to see whether he might help secure the assistance of a staff volunteer and he had advised that there are staff members volunteers who might be able to assist you. You might also wish to explore whether any of the other UN staff associations would be willing and able to assist you.

12. By email of 27 May 2014, the Applicant advised the ED/OAJ that she did not agree that there was a conflict of interest with regard to her request, and that she wished to be provided with OSLA’s list of volunteers as she had contacted the President of the ICTY Staff Association in the past, and he did not have the capacity to assist.

13. The Applicant’s request was forwarded to the Chief, OSLA, who on 29 May 2014 informed the Applicant that OSLA did not have “a long list of volunteers”, and that “any volunteer counsel affiliated with OSLA would be conflicted”.

Procedure

14. On 2 June 2014, the Applicant requested management evaluation of the decisions, *inter alia*, to deny her legal assistance as well as access to UN Headquarters. By memorandum dated 7 July 2014 from the Chief, Management

Evaluation Unit (“MEU”), the Applicant was informed that her request was received by the MEU on 3 June 2014, and that it lacked competence to review a decision to deny OSLA representation, and that her challenge to a denial of a pass to access UN Headquarters was time-barred and thus not receivable.

15. On 2 October 2014, the Applicant filed her application with the Tribunal, contesting several decisions. The application was deemed incomplete due to missing supporting documents, and the Applicant was requested to complete her submission, which she did on 7 November 2014, stating that she wished to contest the following decisions only:

- 1) OSLA/[OAJ] decision denying [her] legal assistance and/or other pertinent information which could have supported [her] in obtaining free legal assistance;
- 2) Decision denying issuance of a UN entry badge to [her], a decision which continued until [her] separation date of 4 April 2014.

16. On 17 November 2014, the application was served on the Respondent who filed a reply limited to the issue of receivability on 17 December 2014. The Applicant submitted comments thereon on 6 January 2015. On 9 February 2015, the Respondent filed his full reply to the application.

17. A case management discussion was convoked for 27 May 2015; however, it was cancelled due to the Applicant’s unavailability. The Applicant also filed on 25 May 2015 a “request for counsel assistance”.

18. By Order No. 116 (GVA/2015) of 9 June 2015, Tribunal decided that the case would be considered on the papers.

Parties’ submissions

19. The Applicant’s principal contentions are:

- a. The entry badge claim is not time-barred; the decision of refusal, although having been first communicated to her in September 2013, was of a continuous nature until her separation from service effective 4 April 2014,

of which she was notified the next day; hence, by filing her request for management evaluation on 3 June 2014, she was not out of time. Indeed, despite the assurances she was given that although no ground pass would be issued for her, her requests for accessing the UN premises would be reviewed on an individual request basis, all her emails to arrange for such access were repeatedly ignored from September 2013 to 4 April 2014; hence, the contested decision is of a continuous nature and her request to challenge it cannot be considered time-barred;

b. As to the merits of her application, she has a right to have access to OSLA since she is a staff member who did not opt out of the contribution scheme to OSLA that was set up in February 2014 pursuant to General Assembly resolution No. 68/254; the decision by the ED/OAJ and the Chief, OSLA, to deny her such legal assistance violates staff rule 11.4(d) and directly contravenes the literal intent and spirit of the General Assembly resolution, as she was imposed a tax while being denied the direct benefit of the scheme. The decision to deny her legal assistance is discriminatory and arbitrary; moreover, it is not *res judicata* with reference to Judgment *Oummih* UNDT/2013/043, as it is clearly a new decision occurring on a different date involving a new set of circumstances. Last but not least, while OSLA has claimed in the past an alleged conflict of interest, she was no longer employed with OSLA or the UN when she filed her new request for legal assistance;

c. Finally, the denial of a ground pass, while she was still a UN staff member with a valid letter of appointment, was discriminatory since it could have been seen as “punishment” for having challenged previous decisions made by the ED/OAJ;

d. She mainly asks to be awarded compensation for the damage caused to her by the decisions, as well as for moral damage for the “humiliating treatment” she endured. She also requests the Tribunal to make a finding that the decision to deny her an entry badge was retaliatory, motivated by prejudice and bias. In order to being able to provide additional supporting

evidence to her case, she asks for access to her former email account at OSLA, or in the alternative, that the Respondent provide all documentation in his possession leading to the contested decisions.

20. The Respondent's principal contentions are:

a. The Applicant's request for management evaluation concerning the entry badge claim was untimely, as she submitted it approximately eight months beyond the deadline; on 21 September 2013, the Applicant received an email from the Chief of Section II, Human Resources Services, OHRM, New York responding to her request for the issuance of an entry badge to the UN Headquarters in New York, which she understood to be a denial of her request for an entry badge; therefore, the 60-day time limit prescribed by staff rule 11.2(c) to request management evaluation commenced on 21 September 2013 and expired on 20 November 2013; the Applicant's request for management evaluation, filed on 3 June 2014, was untimely and her claim in this respect is not receivable before this Tribunal;

b. Should the Tribunal nevertheless find the application receivable, it should be rejected as being without merit. Indeed, as for the entry badge claim, it is without merit since the Applicant—whose duty station at the time was Geneva—failed to demonstrate that she had a right to such a badge to UN premises in New York. Further, she failed to demonstrate that she had effectively been denied access to those premises on 21 September 2013 or at any other occasion up until her separation. The contested decision is moreover not a “continuing decision”;

c. With respect to the Applicant's legal assistance claim, it is *res judicata*, as by a previous application dated 17 September 2012, she had already contested OSLA decision of 19 April 2012 to refuse her legal assistance in order to challenge a decision made by the Chief, OSLA. The Dispute Tribunal held that such refusal was lawful given the inherent conflict of interest posed by her application (see Judgment *Oummih* UNDT/2013/043, confirmed by Judgment *Oummih* 2014-UNAT-413 following withdrawal of the Applicant's appeal). The Dispute Tribunal's

finding also applies to the present case and the Applicant cannot now re-litigate the same issue, as her May 2014 request for legal assistance does not create a new cause of action since no new facts have emerged that would have eliminated the inherent conflict of interest between her and OSLA. The fact that she is no longer a Legal Officer with OSLA does not remove that conflict of interest; also, contrary to the Applicant's contention, a voluntary payroll deduction to fund OSLA does not confer on a staff member a right to receive legal assistance from OSLA. In addition, no deductions were made from the Applicant's salary, benefits and entitlements as she was separated on 4 April 2014 and she did not demonstrate that she did in fact make voluntary contributions to OSLA;

d. Finally, with regard to the Applicant's description of the denial of legal assistance as a discriminatory arbitrary decision and that her entry badge was denied in a discriminatory fashion as "punishment", such claims of discrimination were not made in her request for management evaluation, and they cannot be considered by the Tribunal as they were not pursued in accordance with ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority);

e. Based on the above, the application should be dismissed.

Consideration

21. The Applicant clearly identified two decisions in her amended application, namely the refusal to provide her with an entry badge to the UN premises in New York, and the refusal to grant her legal assistance by OSLA.

Request for a UN entry badge

22. With respect to the issuance of a badge, the Tribunal notes that the Applicant was informed by emails of 18 and 21 September 2013 that "identification cards are issued to person[s] requiring regular access to the Headquarters premises", while also noting that her duty station was Geneva and that her appointment had been renewed solely due to her being on sick leave. She

was told that in case she needed access to the Medical Services located within the UN premises in New York, such access could be arranged, as there was no intention to restrict her from entering the complex.

23. This information shared with the Applicant included obviously an implied refusal to proceed with the issuance of an identification/access badge. In her application, the Applicant identified the date of the decision denying her the issuance of a UN entry badge as “September 2013”, thus confirming that she had understood it as such.

24. Contrary to the Applicant’s view, this decision was not of a “continuous nature”. The decision was taken in September 2013. While the “effects” of this negative decision are ongoing, as it is the case with every refusal or denial, its implementation was however completed on the very date of its transmission to the Applicant. Therefore, by filing a request for management evaluation of that decision only on 2 June 2014, the Applicant acted well beyond the 60-day time limit prescribed by staff rule 11.2(c) to request management evaluation. Having missed that deadline, the Applicant’s challenge of the concerned decision before the Tribunal is irreceivable *ratione materiae* (see *Eggesfield* 2014-UNAT-402).

Request for legal assistance

25. As for the Applicant’s challenge of the denial of legal assistance, the Tribunal notes that in *Oummih* UNDT/2013/043, the Tribunal stated that a denial of legal assistance from OSLA to the Applicant was lawful, because there was a specific inherent conflict of interest posed by her application against a decision emanating from the Chief, OSLA, who was the Applicant’s First Reporting Officer and who had issued a reprimand against her.

26. However, the present application concerns a new OSLA decision, made in a different factual setting, and related to different decisions the Applicant sought to contest. Therefore, the principle of *res judicata* is not applicable. Rather, the circumstances and motivation of the refusal of legal assistance communicated to the Applicant in May 2014 need to be examined in order to determine whether it was lawfully made or not.

27. In that context, the Tribunal observes that the tensions between the Applicant and her superiors, namely the Chief, OSLA, and the ED/OAJ, were stated *in extenso* in previous judgments, lastly in *Oummih* 2015-UNAT-518. Further, it is established jurisprudence that although not unfettered, OSLA has a certain discretionary power in choosing to represent or not staff members seeking its assistance (see *Staedtler* UNDT/2014/127, *Worsley* 2012-UNAT-199, *Kita* UNDT/2010/025). Based on this principle, it follows that a staff member has no unconditional right to be represented by OSLA.

28. The Tribunal finds it necessary to recall the specific circumstances of this case: there can be no doubt that the relationship between the Applicant and her former supervisors at OAJ has completely broken down. Against this unfortunate background, from an objective point of view, it cannot be expected to have any kind of mutual trust between the Applicant and OAJ—including OSLA—which forms the indispensable basis for every client-counsel relationship.

29. In the Tribunal's view, although the Applicant as well as the Chief, OSLA, are not working at OSLA anymore, the overall atmosphere has not changed. On the contrary, the well-known personal disputes between the Applicant and her FRO, as well as with other colleagues, still have an ongoing impact on the present situation since all current counsel at OSLA, which is a rather small UN entity, are familiar with this conflict. In such a situation, no constructive and unbiased exchange between the Applicant—as potential client—and OSLA—as potential counsel—is possible.

30. Therefore, for the time being, the relationship between OSLA and the Applicant can be assessed as constituting a conflict of interest, as it was the case at the time that the contested decision was taken. Taking into account the exceptional circumstances of this rather unique case, the refusal to grant assistance to the Applicant through OSLA cannot be considered illegal. Such refusal does not limit the Applicant's contractual and due process rights in an inappropriate way. The Applicant has sufficient means to address the internal justice system of the United Nations, which does not make it mandatory to have legal representation.

31. In view of the Tribunal's conclusion, there is no need to rule on the Applicant's request to be granted access to her former email account at OSLA, and on her request for counsel assistance in the present proceedings filed on 25 May 2015.

Conclusion

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

The application is rejected in its entirety.

(Signed)

Judge Thomas Laker

Dated this 9th day of June 2015

Entered in the Register on this 9th day of June 2015

(Signed)

René M. Vargas M., Registrar, Geneva