



Before: Judge Coral Shaw

Registry: Nairobi

Registrar: Abena Kwakye-Berko

CASTELLI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Stephen Margetts, ALS/OHRM
Elizabeth Gall, ALS/OHRM

Introduction

1. The Applicant is a staff member of the African Union/United Nations Hybrid Operation in Darfur (UNAMID). He filed an Application on 18 June 2014 challenging the decision of the Office of Human Resources Management (OHRM), which was notified to him on 4 March 2014, that his eligibility for conversion to a continuing appointment did not satisfy two criteria: (a) the number of years of service, and (b) performance rating.

2. The Respondent submitted a Reply on 6 August 2014 in which he alleged that the Application was moot as, following an internal review, the contested decision had been reversed.

3. The Applicant filed his observations on the Respondent's Reply on 14 August 2014.

Facts

4. The Applicant is a Senior Administrative Officer with UNAMID.

5. On 4 March 2014, he was advised by OHRM that two eligibility criteria for the purpose of issuing him with a continuing appointment were not satisfied. These criteria were his years of service and the performance appraisal requirement.

6. On 4 April 2014, the Applicant submitted a request for management evaluation of that decision. In acknowledging his request, MEU advised the Applicant that his request should be reviewed by 19 May 2014 but if not the 90 day deadline for filing an application with the UNDT would run from 19 May or the date on which the management evaluation was completed. The deadline from 19 May was 17 August 2014.

7. On 17 June 2014, the Chief, MEU informed the Applicant that the Under-Secretary-General for Management (USG/DM) had deemed him to have met the eligibility requirement of five years of continuous service. Further, the USG/DM

had remanded his case to the relevant office to reassess whether he met the remaining eligibility criteria in light of the determination that his service should be treated as continuous. The Applicant was also informed that he would be notified of the outcome of the continuing appointment review process in the coming months.

8. The Applicant states that in a further exchange of emails, MEU asked him whether he was satisfied with the response. He responded negatively to that and in a second email of 17 June it was confirmed to him that he also met the second contested criteria.

9. On 18 June 2014, the Applicant filed the present Application with the Dispute Tribunal.

10. On 16 July 2014, the Field Personnel Division of the Department of Field Support (FPD/DFS) advised MEU that it had completed its review of the Applicant's case and determined that he met the eligibility criteria for conversion to a continuing appointment.

11. On 17 July 2014, the Legal Officer, MEU wrote to the Applicant as follows:

FPD has informed me today that they have completed the review of your case and that you have been deemed to meet all of the eligibility requirements for consideration for conversion to a continuing appointment, including the requirement in relation to performance appraisals. Your name will be submitted to OHRM for inclusion in the list of eligible candidates. We don't have a timeline from OHRM on when eligible candidates will be informed of the outcome of the process. However, the above should address all concerns raised in your request for management evaluation.

12. The Applicant states that as at 27 July 2014, Inspira still recorded that the two criteria of continuous service and performance appraisal reports (e-PAS) were unmet. He requests the Tribunal to order the Administration to change his status on the eligibility criteria in Inspira.

Respondent's submissions

13. The Applicant's challenge to the determination that he is ineligible for a continuing appointment is moot. The Dispute and Appeals Tribunals have recognized that an application may be rendered moot where a decision is superseded by a later administrative decision.

14. This principle applies in this case. The contested decision has been superseded by a new assessment of the Applicant's eligibility for a continuing appointment. The Applicant has been informed that his name is to be included by DFS in the list of eligible candidates for a continuing appointment.

15. In this case, the administrative decision has been reversed. The Administration responded to the Applicant's request for management evaluation and corrected the contested decision prior to the completion of the 2012 annual review. Following the MEU's consideration of the matter, the Applicant's name has been submitted for consideration for a continuing appointment together with all other candidates, and he will be notified in due course of the outcome of the process.

16. The Applicant has not been prejudiced in any way by the contested decision and has no entitlement to claim loss or damages.

Applicant's submissions

17. The MEU response after he filed his application to the Tribunal was unclear.

18. MEU responded after its own deadline and only after he filed an appeal with UNDT. Therefore, the response should be considered and treated together with the Respondent's Reply, as part of the Administration's response to the Tribunal on his appeal. If otherwise considered, the Administration would systematically benefit from an unfair advantage and shift the entire burden to staff members to file claims to MEU and appeals with UNDT before providing any response.

19. The Administration took a consistent decision three times and then took a decision contrary to its own previous determinations. This created frustration and anxiety, which was aggravated by the decision of the Administration not to answer his request when he brought the specifics of his case to the attention of FPD/DFS and the absence of a response within the MEU timeframe. Only after his appeal to the Tribunal which required extra effort, did the case receive the required attention and a response within a few days.

20. The Applicant requests compensation for:

- a. loss of chance to be considered for a continuous contract and, as a result, increased job insecurity;
- b. harassment;
- c. denial to a full and fair consideration of his case neglect and emotional distress;
- d. two years loss of salary.

Considerations

21. Articles 2 and 8 of the UNDT Statute define the competence of the Dispute Tribunal.

22. In *Gehr* 2013-UNAT-328, the United Nations Appeals Tribunal (UNAT) held that the decision not to finalise the applicant's performance appraisal ceased to exist when the rebuttal panel issued its report. There was thus no administrative decision on which the UNDT was competent to pass judgment in terms of Articles 2 and 8 of the UNDT Statute.

23. The general principle arising from that case is that where an impugned decision has been corrected by the Administration before a challenge to the Tribunal has been determined; it is in the power of the Tribunal to find that the challenge is moot and therefore not receivable.

24. In the present case both aspects of the administrative decision challenged by the Applicant, namely his years of service and his performance rating, were expressly reversed and rendered moot when on 16 July 2014, FPD/DFS completed its review of the Applicant's case and determined that the Applicant met the remaining eligibility criteria for conversion to a continuing appointment. There is no aspect of the challenged decision remaining to be adjudicated.

25. In any event, there is no factual basis for the Applicant's claims for compensation. After the Applicant submitted his request for management evaluation, MEU kept him informed of progress and ultimately the decision was corrected in the Applicant's favour.

26. He has not lost a chance of consideration for a continuing appointment and has received full consideration of his case. There is no evidence of harassment or negligence or emotional distress to the Applicant that would warrant any compensation for moral damages or material harm.

27. The only remaining issue is the correction of the Inspira record. If this has not been corrected to align with the corrected decision, the Administration should do so within 14 days of the date of this judgment.

Decision

28. In view of the foregoing, the Tribunal decides that this Application is not receivable.

(Signed)

Judge Coral Shaw

Dated this 24th day of June 2015

Entered in the Register on this 24th day of June 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi