



Before: Judge Coral Shaw

Registry: Nairobi

Registrar: Abena Kwakye-Berko

COX

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Michael Shanahan

Counsel for the Respondent:
Steven Dietrich, ALS/OHRM
Alister Cumming, ALS/OHRM

Introduction

1. The Applicant, a Fire Officer at the Security Section, United Nations Mission in South Sudan (UNMISS), filed an Application in which he challenged a decision dated 27 November 2013 which he described as the “ restructuring of the department resulting in the removal of the Applicant’s assigned responsibilities and their subsequent transfer to (another staff member)”.

2. In reply, the Respondent submitted that the Application was not receivable as it had been filed with the Tribunal one day outside the permissible time limits without asking for an extension.

3. The Applicant responded to this submission setting out the facts relating to the filings.

Facts

4. The Applicant sought management evaluation of the contested decision on 27 January 2014. It is not in dispute that the Applicant was required to file his Application on or before 11 June 2014.

5. On 11 June 2014 the Applicant submitted his Application to the UNDT through the e-filing portal. The Application was received and acknowledged at 3.11p.m. CET on 11 June 2014. The Application omitted documents concerning the request for management evaluation. The Registry advised that it was unable to process the Application without copies of the documents. The Registrar wrote, “[i]n light of the foregoing, the Application you submitted on 11 June has been rejected. You will have to submit the Application again along with the documents relating to management evaluation”.

6. The Applicant complied with this direction and submitted the complete Application again on 12 June 2014.

Considerations

7. In *Simmons* Order No. 325 (NY/2010), a case relating to the filing of appeals under the former staff rules, the Tribunal held that the applicable time limits should be strictly applied and that the time limits specified in former staff rule 111.2 were applicable to both incomplete and complete statements of appeal. Noting that the language of the rule did not specify whether it applied only to a full statement of appeal or whether the rule was also applicable in those instances where an incomplete statement of appeal had been filed, the Tribunal stated:

[...]The manner in which an appeal is initiated (complete or full) is not legally-determinative. Rather what is critical is that an appeal was filed in a timely manner...the filing of an incomplete statement of appeal establishes the date of the appeal, for the purposes of staff rule 111.2 and is sufficient for the purposes of that rule.

8. Former staff rule 111.2 materially provided:

(a) A staff member wishing to appeal an administrative decision pursuant to staff regulation 11.1 shall, as a first step, address a letter to the Secretary-General requesting that the administrative decision be reviewed; such letter must be sent within two months from the date the staff member received notification of the decision in writing. The staff member shall submit a copy of the letter to the executive head of his or her department, office, fund or programme.

(i) If the Secretary-General replies to the staff member's letter, he or she may appeal against the answer within one month of the receipt of such reply;

...

(f) An appeal shall not be receivable unless the time limits specified in paragraph (a) above have been met or have been waived, in exceptional circumstances, by the panel constituted for the appeal.

9. The relevant rule in this case is staff rule 11.4(a) which replaced former staff rule 111.2 and provides:

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.

10. Although the wording of staff rule 11.4 is different in some respects from its predecessor, it is also silent as to whether it applies to an incomplete or complete filing so the principle established in *Simmons* applies.

11. In addition, this Tribunal recalls that the consistent practice of both the UNDT and UNAT operating under the present Staff Rules is to accept incomplete filings as sufficient to fulfil the time limits. For example, in *Parker* 2010-UNAT-002, the United Nations Appeals Tribunal held that an appeal was receivable “since it was filed, although incomplete... within 45 calendar days of receipt of the UNDT judgment”.

12. The Tribunal finds that, as a matter of fact and law, the filing of the incomplete application on 11 June 2014 met the time limits for filing an application set out in staff rule 11.4(a). The purported rejection of the Application was in error and of no effect. At the direction of the Registrar the Applicant rectified the Application by including the missing documents within 24 hours of the request.

Conclusion

13. As the incomplete Application was filed in time there was no requirement for the Applicant to request a suspension or waiver of the deadline. Accordingly the Application is receivable *ratione temporis*.

(Signed)

Judge Coral Shaw

Dated this 15th day of October 2015

Entered in the Register on this 15th day of October 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi