



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

HAMMOND

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
UNEP

Introduction

1. On 22 December 2015, the Tribunal received an application contesting the decision “to extend [the Applicant’s] contract for [one] year, instead of the customary [two]-year contract extension for fixed term appointment”. The Applicant states that he is a staff member on a fixed-term contract with the United Nations Environment Programme, stationed in Washington, D.C. He submits that the contested decision was notified to him on 15 October 2015.

2. The Applicant submits that his initial two-year fixed-term appointment began on 1 November 2010. It was extended for two years in November 2012, and for another year in November 2014. On 15 October 2015, he was notified that his contract would be renewed for a one-year period. The Applicant states, however, that it is customary to extend fixed-term contracts for two-year periods, provided that performance is satisfactory, funding is available, and services are required. The Applicant submits that all of these conditions are satisfied in his case and therefore the extension of his contract should have been for two years, not one year.

3. The Applicant states that he has not filed a request for management evaluation request because he prefers to “find solutions to administrative matters such as this through informal means if possible”.

Note on procedure

4. Articles 9 and 19 of the Tribunal’s Rules of Procedure state (emphasis added):

Article 9 Summary judgement

A party may move for summary judgement when there is no dispute as to the material facts of the case and a party is entitled to judgement as a matter of law. The Dispute Tribunal *may determine, on its own initiative*, that summary judgement is appropriate.

...

Article 19 Case management

The Dispute Tribunal may at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties.

5. The Applicant's failure to seek management evaluation of the contested decision raises a clear issue of receivability. On the papers filed by the Applicant, there is no dispute as to any material facts pertaining to this receivability issue, and the Tribunal's determination is restricted entirely to a matter of law.

6. Whilst, in fairness to all parties, it is the practice of the Dispute Tribunal to deal with cases in chronological order of filing, the General Assembly requested in its resolution 66/237, adopted on 24 December 2011, that both the Dispute Tribunal and the United Nations Appeals Tribunal review their procedures in regard to the dismissal of "manifestly inadmissible cases". It is a matter of record that the Dispute Tribunal has, with a view to fast-tracking cases and for purposes of judicial economy, considered matters of admissibility or receivability on a priority basis in appropriate cases, and similarly rendered summary judgments under art. 9 of the Rules of Procedure.

7. In the circumstances of this case, the Tribunal finds it appropriate for the fair and expeditious disposal of the case and to do justice to the parties, as well as in the interests of judicial economy, to not serve the present application on the Respondent and dispose of it by summary judgment.

Applicable law

8. Article 2.1 of the Tribunal's Statute states:

1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms “contract” and “terms of appointment” include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance;

(b) To appeal an administrative decision imposing a disciplinary measure;

(c) To enforce the implementation of an agreement reached through mediation pursuant to article 8, paragraph 2, of the present statute.

9. Article 8 of the Tribunal’s Statute states:

1. An application shall be receivable if:

(a) The Dispute Tribunal is competent to hear and pass judgement on the application, pursuant to article 2 of the present statute;

(b) An applicant is eligible to file an application, pursuant to article 3 of the present statute;

(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required;

...

3. The Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases. The Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.

10. Staff rule 11.2 (Management evaluation) states:

(a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

(b) A staff member wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General, or of a decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following

the completion of a disciplinary process is not required to request a management evaluation.

(c) A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within sixty calendar days from the date on which the staff member received notification of the administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

(d) 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.

11. Staff rule 11.4(a) (United Nations Dispute Tribunal) states:

(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 ninety 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.

Consideration

12. Pursuant to art. 8.1(c) of the Statute of the Dispute Tribunal, as read with staff rule 11.2(a), an applicant must, as a mandatory first step (other than in cases that fall under staff rule 11.2(b)), request management evaluation of the contested decision before filing an application with the Tribunal. It is thus trite law that where an applicant has failed to request management evaluation, the Tribunal has no jurisdiction to consider his or her application. See, for example, *Planas* 2010-UNAT-049; *Kovacevic*

2010-UNAT-071; *Ajdini et al.* 2011-UNAT-108; *Gehr* 2013-UNAT-293; and *Servas* 2013-UNAT-349.

13. The requirement for management evaluation assures that there is an opportunity to speedily resolve a staff member's complaint or dispute without the need for judicial intervention, within the time limit specified by the Statute and the Staff Rules (*Kouadio* 2015-UNAT-558).

14. The Applicant explains that he has not requested management evaluation as he hopes to resolve the matter informally. Whilst the Tribunal encourages informal resolution of disputes in order to save costs of litigation and to maintain and promote harmony in the work place, if an applicant wishes to utilise the formal system of administration of justice, he or she must comply with the statutory provisions requiring management evaluation within the required timeframe. In view of the language of art. 8.3 of the Statute and staff rule 11.2, as well as the jurisprudence of the United Nations Appeals Tribunal (see, e.g., *Costa* 2010-UNAT-036; *Eng* 2015-UNAT-520), the applicable deadlines may be extended only by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General. It has not been averred by the Applicant that there are any such informal resolution efforts through the Office of the Ombudsman and that the Secretary-General accordingly extended the applicable time limits.

15. The Tribunal notes that, having been notified of the contested decision on 15 October 2015, the Applicant was required under staff rule 11.2(c) to submit his request for management evaluation within 60 calendar days of the date of notification, or by 15 December 2015.

16. The Applicant has failed to file a management evaluation request before submitting his application to the Tribunal. Therefore, his application is manifestly not receivable.

Conclusion

17. The application is dismissed.

(Signed)

Judge Ebrahim-Carstens

Dated this 23rd day of December 2015

Entered in the Register on this 23rd day of December 2015

(Signed)

Hafida Lahiouel, Registrar, New York