



Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

WENDLINGER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Stéphanie Cochard, UNOG

Introduction

1. By application filed on Saturday, 9 April 2016, on an appeals form of the United Nations Appeals Tribunal, the Applicant contests the “denial of end of service allocation [‘EOSA’] calculation/taxation according to best prevailing local conditions (Flemming principle)”.

Facts

2. The Applicant, a former staff member of the United Nations Office at Vienna (“UNOV”), Security Services Section, separated from the Organization on early retirement.

3. On 10 February 2016, he wrote to a Human Resources Officer, Human Resources Management Service (“HRMS”), United Nations Office on Drugs and Crime (“UNODC”), stating, *inter alia*, the following:

As to the EOSA sum calculated by UNOV and finally also transferred to my account, I do have to challenge the amount based on the calculation methodology of UNOV and the nonconformity of the latter with methodology applied by the Host country, resulting in a severe discrepancy to the disadvantage of the recipient.

4. On 11 February 2016, the Human Resources Officer, HRMS, UNODC, responded to the Applicant providing him with the policy governing the EOSA calculation and a breakdown of his EOSA calculation.

5. On 11 April 2016, the Tribunal acknowledged receipt of the application, and requested the Applicant to re-file it by no later than 14 April 2016 using the correct application form, and attaching a copy of his request for management evaluation, if any.

6. The Applicant filed the correct application form on 13 April 2016, without indicating whether he had filed a request for management evaluation, and without filing a copy of it.

7. The Tribunal, on 14 April 2016, requested the Applicant, again, to file a copy of his request for management evaluation, if any.

8. The Applicant informed the Tribunal on 19 April 2016 that he had not filed such a request.

Applicant's submissions

9. In his 19 April 2016 submission, the Applicant argues that he was not informed that “a formal administrative review would be required”, adding that “UNOV/UNODC did not respond properly to [his] challenge and [his] explicit request for an administrative decision”, and that past experience shows that the Administration refrains from adequately responding to such requests.

Consideration

10. The Tribunal first has to determine whether the present application is receivable, *ratione materiae*, since it has jurisdiction to consider applications only against an administrative decision for which an applicant has timely requested management evaluation, when required (*Eggesfield* 2014-UNAT-402).

11. With respect to the deadline to request management evaluation, staff rule 11.2(c) provides:

A request for 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 (emphasis added).

12. The Tribunal also recalls the established jurisprudence of the Appeals Tribunal according to which statutory time limits have to be strictly enforced (*Mezoui* 2010-UNAT-043; *Laeijendecker* 2011-UNAT-158; *Romman* 2013-UNAT-308).

13. Furthermore, pursuant to art. 8.3 of its Statute, and equally to the established jurisprudence of the Appeals Tribunal, the Dispute Tribunal has no discretion to waive the deadline for management evaluation or administrative review (*Costa* 2010-UNAT-036; *Rahman* 2012-UNAT-260; *Roig* 2013-UNAT-368; *Egglesfield* 2014-UNAT-402).

14. It results from the documents filed by the Applicant, that the decision he wants to contest was notified to him on or before 10 February 2016; at the time of his filing the application, he had not submitted a request for management evaluation. Based on the deadline to do so as per staff rule 11.2(c), he is no longer in a position to request management evaluation in a timely way. Therefore, the application is irreceivable, *ratione materiae*.

15. With respect to the Applicant's argument that he was not informed that he had to make a formal request for review, the Tribunal recalls what the Appeals Tribunal held in *Diagne et al.* 2010-UNAT-067, namely that ignorance of the law is no excuse, and that every staff member is deemed to be aware of the provisions of the Staff Rules.

16. It results from the foregoing, that the present application being irreceivable *ratione materiae*, the Tribunal is not competent to consider it.

17. The above is a matter of law, which may be adjudicated even without serving the application to the Respondent for reply, and even if it was not raised by the parties (see *Gehr* 2013-UNAT-313, *Christensen* 2013-UNAT-335).

18. Therefore, the Tribunal decides on the present application by way of summary judgement, in accordance with art. 9 of its Rules of Procedure, which provides that the Tribunal may determine, on its own initiative, that summary judgement is appropriate.

Conclusion

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

The application is rejected.

(Signed)

Judge Thomas Laker

Dated this 25th day of April 2016

Entered in the Register on this 25th day of April 2016

(Signed)

René M. Vargas M., Registrar, Geneva