



Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

MPAMA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Elizabeth Brown, UNHCR

Louis Lapicerella, UNHCR

Introduction

1. On 8 December 2017, the Applicant, a former Senior Secretary to the Deputy Director at the G-5 level, with the United Nations High Commissioner for Refugees (“UNHCR”) in the New York Office, filed an application contesting the decision to terminate her indefinite contract dated 13 September 2016.

2. In response, the Respondent submits that the Applicant’s claim is not receivable *ratione temporis* as, without having requested a waiver for extension of time, the Applicant failed to file her application before the Dispute Tribunal within the 90-day period prescribed under art. 8.1 (d)(i) a. of its Statute after her receipts of the management evaluation.

Factual and procedural background

3. The following outline of facts only reflects those circumstances of this case that are relevant to the issue of the receivability.

4. The Applicant held an indefinite contract with the UNHCR office in New York until her separation.

5. By a letter dated 29 January 2016, the Director of the New York Office informed the Applicant that her post was to be abolished effective 1 August 2016 as part of the Office’s restructuring plans.

6. On 13 September 2016, the Applicant received a notice of termination of her indefinite appointment offering her two options: (a) termination to take effect on 30 September 2016 with the compensation in lieu of the notice period as provided within staff rule 9.7(d) or (b) termination to take effect on 31 December 2016 with three months of leave with full pay during the notice period.

7. On 10 November 2016, on behalf of the Applicant, the Office of Staff Legal Assistance (“OSLA”) submitted a request for management evaluation challenging the impugned decision.

8. On 10 December 2016, the Deputy High Commissioner of UNHCR issued a management evaluation upholding this decision.

9. On 8 December 2017, the Applicant, now representing herself, filed the application.

Consideration

10. The Applicant admits in her application that she missed the deadline to file an application before the Tribunal but claims that she did so because OSLA misled and misdirected her by advising her that she did not have a strong case.

11. The Respondent submits that the application is not receivable *ratione temporis* since it was not filed within the prescribed 90 days from the date of the receipt of the Administration’s management evaluation under art. 8.1 of the Statute of the Dispute Tribunal. The Respondent further contends that the Applicant failed to make a written request for suspension or waiver of the deadline for the filing of an application under art. 8.3 of its Statute, and in any event, the Applicant failed to establish any exceptional circumstances that would justify granting a waiver of the statutory time limits.

12. As directed by the Tribunal’s Order No. 5 (NY/2018), the Applicant filed a submission in response to the Respondent’s reply on the receivability of the application, in which she requested a waiver of the statutory 90-day deadline claiming that exceptional circumstances in her case would justify a waiver of the time limits.

13. The Respondent replied that, in accordance with *Nikwigize* 2017-UNAT-731, a written request for suspension, waiver or extension of time limit by an applicant

under art. 8.3 of the Dispute Tribunal's Statute must be submitted prior to the expiration of the deadline and that the Applicant did not file such written request before the deadline expired.

14. As described above, it is undisputed that the Applicant filed the present application after the mandatory time limit had expired. The only remaining question is whether the Tribunal is competent to suspend or waive the deadline for the filing of an application under art. 8.3 of its Statute when the Applicant requested such suspension or waiver after the time limit expired, and, if so, if such suspension or waiver is warranted.

15. In *Nikwigize* 2017-UNAT-731, citing *Thiam* 2011-UNAT-144, the Appeals Tribunal held that the Dispute Tribunal cannot exercise its discretion under art. 8.3 of its Statute when a written request for suspension or waiver of time limit is filed after the statutory time limit for filing the application had lapsed. The Appeals Tribunal further held that the Dispute Tribunal is not competent to consider whether there were exceptional circumstances to justify the delay in filing the application when a written request was filed late.

16. Therefore, under the jurisprudence of the Appeals Tribunal, this Tribunal is not competent to suspend or waive the statutory time limit under art. 8.3 of its Statute or even to consider whether there were exceptional circumstances to justify the delay in filing the application.

17. Accordingly, the application is not receivable *ratione temporis* as it was filed after the statutory time limit under art. 8.1 of its Statute expired.

Conclusion

18. In light of the foregoing, the Tribunal rejects the present application as not receivable.

(Signed)

Judge Joelle Adda

Dated this 24th day of July 2019

Entered in the Register on this 24th day of July 2019

(Signed)

Nerea Suero Fontecha, Registrar, New York