



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

BARRI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Teresa Posse, UNDP

Introduction and Procedural History

1. The Applicant is a former staff member of the United Nations Development Programme (UNDP). He served on a fixed term appointment, as a Finance Analyst, and was based at the UNDP Office in Khartoum, Sudan.

2. On 11 September 2019, the Applicant filed an application with the United Nations Dispute Tribunal in Nairobi challenging the Respondent's decision to separate him from service without the payment of termination indemnity "as a long-serving staff".

3. The Application was served on the Respondent on 13 September 2019.

4. On 17 September 2019, the Respondent moved for the application to be dismissed as not receivable.

Facts

5. On 28 October 2018, the Applicant was formally notified that his fixed term appointment would not be renewed when it expires on 31 December 2018.

6. On 26 November 2018, the Applicant enquired into the payment of termination indemnities upon his separation.

7. The Respondent wrote to the Applicant the following day, on 27 November 2018, and informed him that "the standard fixed-term appointment non-extension procedures were applicable" to him and that he was not entitled to the payment of termination indemnities. Further, he was told that he was not considered a "long serving" staff member.

8. On 27 December 2018, the Applicant was told that since he was "separated in 2010 with payment of accrued leave" he does not qualify as a "long serving staff

member” and that the impugned decision was therefore “compliant with human resources policies and procedures.”¹

9. On 31 December 2018, the Applicant was told that “what determined eligibility for termination indemnities is whether your contract is being ended before” it expires.² In the case of the Applicant, he was being separated *upon expiry* of his existing contract.

10. On 12 February 2019, the Applicant sought “an inquiry” into the impugned decision.

11. On 13 February 2019, the Respondent asked the Applicant if he would like to pursue informal resolution of the dispute or if he intended to file a request for management evaluation.

12. On 28 February 2019, the Applicant was advised/cautioned that the process of seeking informal resolution of a dispute does not suspend the statutory deadline stipulated in staff rule 11.2(c).

13. On 6 May 2019, the Applicant informed the Respondent that he was not satisfied with the outcome of the informal resolution that was attempted and that he wished to request management evaluation of the impugned decision.

14. The applicant received his management evaluation decision on 25 June 2019.

Considerations

15. The impugned decision on the payment of termination indemnities is not receivable.

16. In accordance with art. 8 of the Statute of the United Nations Dispute Tribunal, an application is receivable if an applicant has previously submitted the contested

¹ Application, annex 1.

² Application, annex 1.

administrative decision for management evaluation, where required. Absent a request for management evaluation, the Tribunal may not consider the merits of the case. Concurrently, staff rule 11.2(c) stipulates that:

[a] request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 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.

17. Exceptions from the obligation to request management evaluation are defined in staff rule 11.2(b). The impugned decision does not fall under any of these exceptions. The Applicant was required to submit a request for management evaluation. He did not do so within the expressly stipulated timeframe.

18. Having examined the documentary evidence on file, the Tribunal finds that – at the very latest - the administrative decision triggering the time limits for the Applicant to request management evaluation was the communication of 31 December 2018 where the Applicant was informed, in no uncertain terms, that he was not eligible for the payment of termination indemnities and why.³

19. The Applicant requested management evaluation of the impugned decision on 6 May 2019, well beyond the stipulated 60-day time limit.

20. The Tribunal recalls that although staff rule 11.2 and art. 8 of UNDT Statute require only requesting management evaluation and not actually obtaining it, it must be understood that the obligation to “submit the contested administrative decision for management evaluation” means submitting it effectively, so as to enable a response on the merits. The rationale enunciated by the Appeals Tribunal in the case of premature applications applies here as well⁴: management evaluation provides the Administration

³ Applicant, annex 1.

⁴ *Kouadio* 2015-UNAT-558 para 17; *Amany* 2015-UNAT-521, para. 17; *Nagayoshi* 2015-UNAT-498 para 36; *Mosha* 2014-UNAT-446, para. 17; *Christensen* 2013-UNAT-335, para. 2.; *Pirnea* 2013-UNAT-311 para 42.; *Neault* 2013-UNAT-345 at para. 34.

an opportunity to correct any errors in an administrative decision and resolve disputes without the necessity to involve judicial review; moreover, provides for the applicant an opportunity to consider reasons on the part of the Administration prior to drafting and filing of the application and in this way fosters rationality and completeness of the argument before the Tribunal. Where the management evaluation was requested late, the result is as if it were not requested at all.⁵

21. It is settled law that there is no power to waive the deadlines for requesting management evaluation.⁶ The present claim is not receivable simply because of the Applicant's failure to request management evaluation in good time.

Judgment

22. The application is not receivable and is dismissed in its entirety.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 20th day of September 2019

Entered in the Register on this 20th day of September 2019

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi

⁵ See *Awan* 2015-UNAT-588; see also *Mbali Saga* UNDT-2019-143.

⁶ See *Costa* 2010-UNAT-036; *Trajanovska* 2010-UNAT-074; *Sethia* 2010-UNAT-079; *Ajdini et. al.* 2011-UNAT-108.