



Before: Judge Francis Belle

Registry: New York

Registrar: Nerea Suero Fontecha

DORRA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:

Michael Brazao, OSLA

Counsel for Respondent:

Elizabeth Gall, ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a Resident Investigator at the P-3 level with the Office of Internal Oversight Services (“OIOS”), contests the refusal of the Administration to grant an exception to an eligibility criterion for the Applicant to be considered for a continuing appointment.

2. For the reasons below, the Tribunal finds that the application is not receivable.

Factual background

3. The Applicant has worked as a P-3 Resident Investigator with OIOS since 27 May 2006. Initially, he was granted a one-year Appointment of Limited Duration (“ALD”) which was governed by the then 300-series of the Staff Rules and whose appointment was not reviewed by a Secretariat review body. As the 300-series appointments were phased out, the Applicant’s ALD was converted to a fixed-term appointment on 1 July 2009. The letter granting a new fixed-term appointment provided that this appointment was limited to service at the mission until he goes through a competitive process subject to a Secretariat review body.

4. Under the General Assembly resolution 65/247 (Human resources management), adopted on 24 December 2010, the system whereby continuing appointments could be granted to eligible staff members was established, and ST/SGB/2011/9 (Continuing appointments) was promulgated on 18 October 2011.

5. Thereafter, the Applicant’s eligibility for a continuing appointment was reviewed twice.

6. The first review as of 1 July 2012 (“2012 review”) was conducted from July 2013, and by email dated 7 November 2014, the Executive Office, OIOS, informed the Applicant that he had been found ineligible for a continuing appointment as he had not been selected for a position through a competitive process that had been

reviewed by a Secretariat review body, which is one of the eligibility criteria for a continuing appointment.

7. The second review as of 1 July 2013 (“2013 review”) was carried out from November 2015. The Respondent was unable to provide a copy of the notification of the 2013 review outcome sent to the Applicant and the exact date of the notification is unknown, but by email dated 31 May 2016 to the Executive Officer, OIOS, the Applicant acknowledged that he had been informed that he was ineligible for a continuing appointment for the same reason. In this email, the Applicant asked that his recruitment documents be submitted to a Secretariat review body and that the review of his eligibility for a continuing appointment be reconsidered.

8. After May 2016, the Applicant engaged in discussions with the Executive Office, OIOS for several months and continued to question the decision that he was ineligible for a continuing appointment, and also sought the intervention of senior officers at OIOS.

9. On 13 February 2017, the Assistant Secretary-General for Internal Oversight Services (“ASG/OIOS”) sent a memorandum to the Assistant Secretary-General for Human Resources Management (“ASG/OHRM”) requesting that the eligibility criterion which made the Applicant ineligible for a continuing appointment be waived, noting that the Applicant was a long serving staff member in a difficult duty station with a satisfactory performance record.

10. On 6 March 2017, the then acting ASG/OHRM replied to the ASG/OIOS recalling that the Executive Office, OIOS had deemed the Applicant ineligible for a continuing appointment during the 2013 review and stated that he was not in a position to approve his request for a waiver.

11. On 20 April 2017, the Applicant requested the management evaluation of the decision not to grant a continuing appointment and not to place him in the P-3 investigator roster.

12. On 28 June 2017, the management evaluation upheld the decision not to grant him a continuing appointment. Regarding the Applicant's challenge to the decision not to place him in the P-3 investigator roster, the management evaluation found this claim not receivable on the basis that he failed to contest a specific administrative decision that is reviewable.

13. On 22 September 2017, the Applicant filed the present application.

Consideration

14. As a preliminary matter, the Tribunal notes that it is competent to raise a receivability issue on its own initiative, whether or not it has been raised by the parties (see, for instance, *O'Neill* 2011-UNAT-182, para. 31).

15. In the present application, the Applicant describes the contested decision as “the refusal of the Administration to grant an exception, pursuant to its authority under Staff Rule 12.3(b), to the strict application of the eligibility of the Applicant to be considered for a continuing appointment”, which refers to the ASG/OHRM's response dated 6 March 2017. However, in his request for a management evaluation, the Applicant challenged the decision not to grant him a continuing appointment, which was notified to him on or about 31 May 2016. These two decisions are separate and different decisions. However, the Applicant did not raise any claim with regard to the Administration's refusal to grant an exception under staff rule 12.3(b) in his request for a management evaluation. Consequently, the management evaluation decision makes no reference to a question about the Administration's refusal to grant such an exception.

16. Pursuant to art. 8.1 of its Statute, the Dispute Tribunal has jurisdiction to consider applications appealing an administrative decision only when a staff member has previously submitted the contested decision for management evaluation. As the Appeals Tribunal held in *Aliko* 2015-UNAT-540, at para. 38, the Dispute Tribunal has no competence to address the allegations not raised in the management evaluation

request, and therefore, the application contesting the Administration's refusal to grant an exception under staff rule 12.3(b) is not receivable.

17. Even if the Tribunal considered that the Applicant is contesting the decision not to grant him a continuing appointment in the present application, the application is not receivable as time-barred. Under staff rule 11.2(c), the statutory time limit for requesting a management evaluation is within 60 days from the notification of the contested decision. The Applicant requested a management evaluation on 20 April 2017, more than 10 months after the notification of the decision not to grant him a continuing appointment on or about 31 May 2016. The reiteration of a challenge to an administrative decision does not reset the clock with respect to the statutory timelines; rather, the time starts to run from the date the original decision was made (*Sethia* 2010-UNAT-079; *Odio-Benito* 2012-UNAT-196; *Staedtler* 2015-UNAT-546, *Kazazi* 2015-UNAT-557).

Conclusion

18. The Tribunal rejects the application as not receivable.

(Signed)

Judge Francis Belle

Dated this 25th day of November 2019

Entered in the Register on this 25th day of November 2019

(Signed)

Nerea Suero Fontecha, Registrar, New York