



Before: Judge Francesco Buffa

Registry: Geneva

Registrar: René M. Vargas M.

WILLIAMS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT
ON RECEIVABILITY**

Counsel for Applicant:
Edward Patrick Flaherty

Counsel for Respondent:
Kong Leong Toh, UNOPS

Introduction

1. The Applicant, a former Executive Director of the Water Supply and Sanitation Collaborative Council (“WSSCC”) at the D-2 level with the United Nations Office for Project Services (“UNOPS”) in Geneva, contests the Administration’s decision not to select him for the post of Executive Director, WSSCC.

2. In his reply, the Respondent contends that the application is not receivable since the Applicant failed to request management evaluation of the contested decision within the 60-day time limit under staff rule 11.2(c).

Facts and procedural history

3. On 1 October 2012, the Applicant was seconded from UN-Habitat to UNOPS to assume the position of Executive Director, WSSCC.

4. On 3 October 2017, UNOPS informed the Applicant that a new job description for his position had been approved, which would come into effect on 1 January 2018. Therefore, the Applicant was informed, his appointment would not be renewed, and he would be separated from UNOPS effective 31 December 2017 unless he applied for and was selected for the modified post or another post with UNOPS.

5. On 5 November 2017, the Applicant applied for the modified post of Executive Director, WSSCC.

6. On 10 January 2018, the Deputy Director of the UNOPS People and Change Group sent an email to the Applicant to check his availability “for a call on the outcome of the selection process for the WSSCC [Executive Director]”.

7. On 12 January 2018, the Deputy Director and the Applicant had a phone conversation. On the same day, the Deputy Director sent an email to his colleagues informing them that he “informed [the Applicant] of the outcome of the process”.

8. On 15 January 2018, the Applicant wrote an email to the Deputy Director, acknowledging a phone call with him the previous Friday. The Applicant wrote that he appreciated an offer to stay on the UNOPS payroll until he was reabsorbed by UN-Habitat.

9. On 1 March 2018, the selection of the successful candidate for the WSSCC Executive Director was announced.

10. On 20 March 2018, the Applicant requested management evaluation of his non-selection decision.

11. On 19 July 2018, the Applicant received the response to his request for management evaluation. UNOPS informed the Applicant that his request was not receivable as he had submitted it more than 60 days after he had been notified of the contested decision, and that the impugned decision was otherwise lawful.

12. On 17 October 2018, the Applicant filed the application referred to in para. 1 above.

13. On 19 November 2018, the Respondent filed his reply contending that the application is not receivable.

14. By Order No. 42 (GVA/2020) dated 6 April 2020, the Tribunal decided to reassign the case to the undersigned Judge.

15. On 15 June 2020, pursuant to Order No. 45 (GVA/2020), the Applicant filed a submission on the issue of receivability.

Consideration

16. Under staff rule 11.2(c), the statutory time limit for requesting management evaluation is within 60 days from the notification of the contested decision. Article 8.1 of the Dispute Tribunal's Statute provides that the application is

receivable if the contested administrative decision has previously been submitted for management evaluation, where required.

17. The Appeals Tribunal's jurisprudence has established that "[t]he date of an administrative decision is based on objective elements that both parties (Administration and staff member) can accurately determine" (*Rosana* 2012-UNAT-273, para. 25, affirmed in *Newland* 2018-UNAT-820, para. 34).

18. The Respondent submits that the application is not receivable since the Applicant failed to request management evaluation of the contested decision within the 60-day time limit under staff rule 11.2(c). The Respondent further submits that the Deputy Director of the UNOPS People and Change Group notified the Applicant of the contested decision verbally on 12 January 2018. Citing *Fan* UNDT/2018/004 and *Auda* 2017-UNAT-746, the Respondent submits that a valid notification of the contested decision can be either verbal or written.

19. In response, the Applicant preliminarily objects that the Respondent's reply exceeds the allotted page-limit provided by Practice Direction No. 4. The Tribunal observes that the exceeding length of the Respondent's reply could entail an irregularity that does not interfere with the issue of receivability of the application, which must be assessed by the Tribunal on its own motion.

20. The Applicant, in his response, while admitting that he had a phone conversation with the Deputy Director on 12 January 2018 and that "they discussed the subject of non-selection", claims that he was not officially notified of the contested decision nor the name of the successful candidate during that conversation. Citing the Appeals Tribunal's judgments *Babiker* 2016-UNAT-672 and *Jean* 2017-UNAT-743, the Applicant submits that the 12 January 2018 phone conversation was too casual and informal to constitute a legal notification triggering the time limit for filing a request for management evaluation. The Applicant submits that the current case should be distinguished from *Auda* 2017-UNAT-746, in which the Appeals Tribunal found that

the date and the content of the verbal notification were undisputed and that the contested decision was communicated with sufficient gravitas.

21. Having reviewed the evidence on file and the parties' arguments, the Tribunal finds that the application is not receivable as it is time-barred.

22. It results from the file that, on 12 January 2018, the Deputy Director of the UNOPS People and Change Group, in a telephone call, informed unequivocally the Applicant of the contested decision.

23. The Applicant claims that he was only officially made aware of his non-selection for the post when a formal announcement was made on 1 March 2018, which stated that another candidate had been chosen for the position. The Tribunal finds that this claim is ill-founded, as a verbal unequivocal communication is sufficient for the purpose of staff rule 11.2(c) (see *Auda* 2017-UNAT-746).

24. The Applicant cites two judgments by the Appeals Tribunal to claim that the 12 January 2018 phone conversation does not constitute a notification for the purpose of staff rule 11.2(c). In *Jean*, the Appeals Tribunal found that the purpose and content of the verbal communication was not clear and was only supported by the unsigned and undated meeting minutes, which had not been previously shared with the applicant, and otherwise was not corroborated by any other evidence. In *Babiker*, a supervisor sent an email to the applicant informing him that his appointment would not be renewed and that the applicant would be notified of the contested decision in due course per the normal procedures. This email was followed by the official notification of the contested decision by a senior country director of the country office. The Appeals Tribunal found that the supervisor's email did not constitute the notification for the purpose of staff rule 11.2(c) considering that it was stated in the email that the official notification would follow in due course.

25. The current case is distinguishable from *Jean and Babiker*. In this case, it is not disputed that the Applicant and the Deputy Director had a phone conversation to discuss the Applicant's non-selection, and this is further supported by contemporaneous email communications: the Deputy Director specifically requested a phone call to discuss "the outcome of the selection process for the WSSCC [Executive Director]", and the Deputy Director informed his colleagues on the day of the phone conversation that he "informed [the Applicant] of the outcome of the process". Even if they discussed other matters during the phone conversation, the record makes it clear that the purpose and content of the communication was to notify the Applicant of the contested decision and there is no evidence to support the claim that this was only an informal communication to be followed by an official written notification.

26. The Applicant further claims that the current case should not be rejected as not receivable since the non-selection decision cannot be dissociated from the non-renewal decision which was adjudicated in the Dispute Tribunal's Judgment in *Williams* UNDT/2020/054. This claim is without merit. While the two decisions are inter-linked, they are nonetheless separate and distinct administrative decisions that were notified to the Applicant separately on different dates.

27. In light of the foregoing, the Tribunal finds that the Applicant's request for management evaluation of the contested decision, filed only on 20 March 2018, namely after the expiration of the 60-day time limit set out in staff rule 11.2(c), was late and therefore the application is not receivable.

Conclusion

28. The Tribunal rejects the application as not receivable.

(Signed)

Judge Francesco Buffa

Dated this 30th day of June 2020

Entered in the Register on this 30th day of June 2020

(Signed)

René M. Vargas M., Registrar, Geneva