



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2019/050

Judgment No.: UNDT/2020/180

Date: 20 October 2020

Original: English

Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Nerea Suero Fontecha

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Nusrat Chagtai, ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a Senior Programme Assistant at the G-7 level in New York, contests the decision to pay her special post allowance (“SPA”) at the P-2 level, rather than the P-3 level, during her temporary assignment to the position of Human Resources Officer at the P-3 level.

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

Facts and procedural history

3. On 7 May 2018, the Applicant was temporarily appointed to the position of Human Resources Officer at the P-3 level until 30 December 2018.

4. On 5 September 2018, the Applicant initiated a request for a SPA.

5. On 11 February 2019, the Applicant received a Personnel Action notifying her that she was granted a SPA at the P-2, step 3 level.

6. On 13 March 2019, the Applicant filed a request for management evaluation of the aforesaid decision which she contested.

7. On 12 July 2019, the Applicant filed the present application.

8. On 13 August 2019, the Respondent filed the reply arguing that the application is not receivable *ratione temporis*.

9. On 22 August 2019, the Applicant filed for leave to provide a response on the receivability issue.

10. On 9 October 2020, pursuant to Order No. 147 (NY/2020), the Applicant filed her response on the receivability issue.

Consideration

11. In the reply, the Respondent submits that the application is not receivable since it was not filed within the 90-day time limit under art. 8(1)(d)(i)(b) of the Dispute Tribunal's Statute.

12. In response, in the 9 October 2020 submission, the Applicant submits that she believed that the deadline for her application was 12 July 2019 and she waited until the last day because she was hoping that her case would be resolved at the management evaluation level, based on her previous communications of April and May 2019 with the Management Evaluation Unit ("MEU") who had been making efforts to resolve her case. Further, she submits that her personal circumstances resulting from a serious car accident, her extended sick leave and other health issues constitute exceptional circumstances warranting a suspension or waiver of the 90-day time limit.

13. Article 8(1)(d)(i)(b) of the Tribunal's Statute provides that in cases where a management evaluation of the contested decision is required, the application should be filed "[w]ithin 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided". In this case, no response to the Applicant's management evaluation request was provided.

14. Under art. 34(a) of the Tribunal's Rules of Procedure, when calculating the time limits, the time limits "shall not include the day of the event from which the period runs". Accordingly, as the deadline of 90 calendar days is to be counted from 13 April 2019 which expires on 11 July 2019, the application was not filed within the statutory deadline but one day too late, namely on 12 July 2019.

15. Under art. 8(3) of the Statute, the Tribunal "may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases".

16. In her submission dated 22 August 2019, the Applicant requests that the Tribunal consider her exceptional circumstances and her incapacitation and receive her application in the interest of fairness and justice. In accordance with Order No. 147

(NY/2020), the Applicant made further submissions regarding her personal circumstances with supporting documentation.

17. The Applicant submits that on 27 February 2019, she was involved in a serious car accident, and over the next several months, had numerous doctors' appointments, underwent extensive physical and occupational therapies, and took various medications. At the same time, she also dealt with other health issues. The Applicant remained on certified sick leave until 18 August 2019.

18. The next question is therefore whether the Applicant's situation could be considered "exceptional cases" under art. 8(3) of the Statute.

19. The Appeals Tribunal recently examined the question of whether exceptional circumstances exist for suspension or waiver of the court deadlines in *Gelsei* 2020-UNAT-1035. Citing *Sylvester* 2018-UNAT-872, the Appeals Tribunal held that if an applicant requested such waiver then s/he bore the burden to prove "any circumstances beyond [her/his] control that would have the effect of preventing him from acting within the statutory time limits" (para. 30). The Appeals Tribunal stated that the circumstances should meet "the test of untypicality or unusualness" (para. 34).

20. The Appeals Tribunal further held that after exceptional circumstances are established, the Tribunal should exercise its discretion to suspend or waive the court deadlines considering a balancing of the rights and interests of the parties. The length of any delay, and the responsibility for the delay could be also considered in the exercise of this discretion (para. 24). However, the Appeals Tribunal emphasized that the duration of delay is irrelevant to the preliminary question of whether there are exceptional circumstances. Only after exceptional circumstances are established, the length of a delay could become a relevant factor (para. 28).

21. In this case, there is no doubt that the Applicant experienced serious medical issues due to a car accident and that she received extensive medical treatment while remaining on sick leave from February to August 2019. However, the Tribunal also

notes that the Applicant filed both her request for management evaluation and application, albeit one day late, during this time period, and also communicated with MEU several times including on 12 July 2019, the day she believed to be the deadline for her application before the Dispute Tribunal.

22. Further, the Applicant does not argue nor present any evidence that there were some exceptional circumstances on 11 July 2019 which prevented her from filing the application that day. Rather, it is apparent that she filed the application on the following day because of her mistaken belief that 12 July 2019 was the deadline for her application.

23. While the Tribunal is sympathetic towards the Applicant, who was dealing with significant medical issues while trying to resolve her case, the Tribunal does not find that she has proved that any exceptional circumstances beyond her control prevented her from filing the application on 11 July 2019. Instead, it follows that her delay was due to a simple miscalculation of her statutory 90-day deadline. The delay of duration in this case was only one day and therefore it could have been considered favorably for the Applicant in consideration of her request for waiver of the deadline. However, as the Appeals Tribunal stated, the duration of delay is only relevant after exceptional circumstances are already established.

24. As a final issue, the Tribunal notes that the Applicant requests that, in the interest of her privacy and the protection of her medical information, anonymity be granted in this case. If it is not possible, she requests that the specific details of her medical condition not be made a part of the public record.

25. Article 11.6 of the Dispute Tribunal's Statute and art. 26 of its Rules of Procedure provide that the judgments of the Dispute Tribunal shall be published, while protecting personal data. The Appeals Tribunal has held in this regard that "the names of litigants are routinely included in judgments of the internal justice system of the

United Nations in the interests of transparency and, indeed, accountability” (*Lee* 2014-UNAT-481). The Appeals Tribunal’s practice establishes that the principle of publicity can only be departed from where the applicant shows “greater need than any other litigant for confidentiality” (*Pirnea* 2014-UNAT-456) and that it is for the party making the claim of confidentiality to establish the grounds upon which the claim is based (*Bertucci* 2011-UNAT-121).

26. In light of the fact that the Applicant’s medical information is discussed in this judgment, the Tribunal finds it reasonable to grant her request for anonymity.

Conclusion

27. In light of the above, the Tribunal rejects the application as not receivable.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 20th day of October 2020

Entered in the Register on this 20th day of October 2020

(Signed)

Nerea Suero Fontecha, Registrar, New York