



Before: Judge Francesco Buffa

Registry: Geneva

Registrar: René M. Vargas M.

WOZNIAK

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alister Cumming, UNICEF

Esther Uwazie, UNICEF

Introduction

1. By an incomplete application filed on 3 December 2019, the Applicant, a former staff member of the Supply Division, the United Nations Children’s Fund (“UNICEF”), contests the decision to separate her from service on 30 April 2019 by retirement upon her reaching the age of 62 years.
2. Following its completion on 13 December 2019, the application was served on the Respondent on 16 December 2019. The Respondent filed his reply on 13 January 2020.
3. On 26 January 2021, the case was assigned to the undersigned Judge.
4. By Order No. 51 (GVA/2021) of 17 February 2021, the Tribunal informed the parties of its finding that the matter could be determined on the papers without holding a hearing and ordered them to file closing submissions by 25 February 2021.
5. On 22 February 2021, the Applicant filed her closing submission whereas the Respondent did so on 25 February 2021.

Facts

6. The Applicant was born on 9 April 1957 and joined UNICEF on 14 July 2008. Under former staff regulation 9.2 (ST/SGB/2017/1), her mandatory age of retirement was 62 years in April 2019. The revised Staff Regulations and Rules (ST/SGB/2018/1) effective from 1 January 2018 provide for a mandatory retirement age of 65 years for all staff members while granting them an acquired right to their normal retirement age (see staff rule 13.13).
7. Under UNICEF’s Executive Directive on Staff Mobility and Rotation (CF/EXD/2015-002), UNICEF staff members are expected to move to new duty stations periodically; however, those who are within two years of mandatory retirement may request deferment of rotation.

8. On 9 June 2017, the Applicant requested a deferment of rotation on the grounds of her impending retirement at the age of 62 years.

9. By email dated 6 July 2017, the Mobility Project Team within the UNICEF's Division of Human Resources ("DHR") informed the Applicant that in accordance with the revised rules on mandatory age of separation coming into force on 1 January 2018, her retirement date was 9 April 2022 (65 years). It further emphasized that if the Applicant still wished to be considered for deferment of rotation, she would have to agree not to seek a postponement of her retirement age.

10. On 17 July 2017, the Applicant replied by email that "as per current regulations my retirement date will be [9 April] 2019 and it is my current intention to not postpone it".

11. By email dated 25 July 2017, the Chief of the Mobility and Staffing Section, DHR, UNICEF, informed the Applicant that her request for deferment of rotation had been granted on the basis that the Applicant would retire on 30 April 2019.

12. On 26 July 2017, the Applicant replied by email, confirming her understanding of the basis on which her deferment had been granted.

13. By email dated 25 April 2018, the UNICEF Supply Division informed the Applicant, *inter alia*, that they had received a notification from DHR regarding her deferred rotation on grounds of retirement on 30 April 2019.

14. On 29 May 2018, the Applicant wrote to DHR to inquire about conditions under which she could remain in service until the age of 65 while confirming her understanding that her deferment from rotation was granted based on her retirement at the age of 62.

15. By email dated 16 August 2018, the Chief of the Mobility and Staffing Section of DHR replied to the Applicant that it would not be possible to change her retirement date considering that she had been fully informed of the change in retirement policy when making and reconfirming her request for deferment of rotation on grounds of retirement at the age of 62.

16. By letter dated 17 October 2018, UNICEF informed the Applicant of the administrative formalities regarding her separation from service on 30 April 2019 in view of her retirement.

17. On 7 November 2018, the Applicant wrote to DHR to inquire again about the conditions for changing her retirement age to 65.

18. On the same day, the Director of DHR replied to the Applicant that it would not be possible to change the retirement date given that she had confirmed in writing that she would retire in April 2019 to obtain her rotation deferral.

19. In December 2018, the Applicant contacted the Ombudsperson at the UNICEF for assistance. In February 2019, the Ombudsperson advised her to ask for legal assistance from the Office of Staff Legal Assistance (“OSLA”). In March 2019, the Applicant contacted OSLA for legal advice.

20. On 30 April 2019, the Applicant was separated from the UNICEF’s service.

21. On 24 July 2019, the Applicant requested management evaluation of *inter alia* the contested decision referred to in para. 11 above.

22. By letter of 6 September 2019, the Deputy Executive Director, Management, UNICEF, found that the Applicant’s request is not receivable because it had been filed outside the time-limit provided for in staff rule 11.2(c).

Consideration

23. In the present case, the Respondent contends that the Tribunal is not competent to review the contested decision because the Applicant’s request for management evaluation was filed outside the 60-day time limit set forth by staff

rule 11.2(c). In this respect, the Tribunal recalls that it is competent to raise a receivability issue on its own initiative, “whether or not it has been raised by the parties” (see *O’Neill* 2011-UNAT-182, para. 31).

24. Under art. 8.1(c) of the Tribunal’s Statute, an application is receivable if an “applicant has previously submitted the contested administrative decision for management evaluation, where required”. Staff rule 11.2(a) requires that a staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment submit a request for a management evaluation as a first step. Pursuant to staff rule 11.2(c), a request for a management evaluation shall be submitted “within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested”.

25. To determine the date by which a staff member must seek review of an implied decision, the Tribunal must “first establish the date on which the staff member knew or reasonably should have known of the implied decision” (see *Chahrour* 2014-UNAT-406, para. 31).

26. In the present case, the Tribunal notes that the Organization made it clear by email of 25 July 2017 that the Applicant would retire on 30 April 2019, which formed the basis of the Organization’s approval of her request for deferment of rotation. When the Applicant confirmed her understanding of the basis on which her deferment was granted on 26 July 2017, she knew or reasonably should have known that the Administration had decided to separate her from service by retirement on 30 April 2019.

27. The chronology of the events shows that the Organization reiterated to the Applicant the contested decision by email of 16 August 2018, by letter dated 17 October 2018, and by email of 7 November 2018. In this respect, the Tribunal recalls that “the reiteration of an original administrative decision, if repeatedly questioned by a staff member, does not reset the clock with respect to statutory timelines. Rather, time starts to run from the date on which the original decision was [notified]” (see *Kerby* 2020-UNAT-1064, para. 37).

28. The Tribunal thus considers that, at the latest, the Applicant was notified of the contested decision on Wednesday, 26 July 2017. It follows that she should have filed her request for a management evaluation by Monday, 25 September 2017. Instead, she only did so on 24 July 2019, around 22 months later.

29. Even if the Tribunal were to entertain that the communication of 25 July 2017 did not amount to a notification of the contested decision, the Applicant was clearly aware of the contested decision by the date of her separation and should have requested management evaluation of the decision that led to her separation from service within 60 days of that date, i.e., by Monday, 1 July 2019.

30. Therefore, the Applicant's request for management evaluation of 24 July 2019 falls outside the statutory deadline.

31. Recalling that the authority to extend the 60-day statutory deadline for requesting management evaluation is reserved for the Secretary-General under staff rule 11.2(c), the Tribunal notes that the Secretary-General did not exercise such authority in the present case. Thus, regardless of whether the Applicant was seeking to resolve the matter informally through the Ombudsman or discussing the case with OSLA, she had an obligation to comply with the 60-day statutory deadline. In any event, the Applicant's efforts to resolve the matter informally through the Ombudsman between December 2018 and February 2019 or discussing the case with OSLA as of March 2019 could not have had any impact on her obligation to request management evaluation of the contested decision by 25 September 2017.

32. The Tribunal also wishes to point out that ignorance of the law cannot be invoked as an excuse to justify the failure to comply with a statutory deadline as "[i]t is the staff member's responsibility to ensure that he or she is aware of the applicable procedure in the context of the administration of justice at the United Nations" (see *Vukasović* 2016-UNAT-699, para. 14; *Kissila* 2014-UNAT-470, para. 24), including the applicable time limits. Thus, the Applicant's argument

that UNICEF does not have a process to inform staff members about the procedures for appealing administrative decisions has no merit.

33. Accordingly, the Tribunal finds that the Applicant's request for management evaluation on 24 July 2019 was time-barred, and thus the present application is not receivable.

Conclusion

34. In view of the foregoing, the Tribunal DECIDES to reject the application as not receivable *ratione materiae*.

(Signed)

Judge Francesco Buffa

Dated this 5th day of March 2021

Entered in the Register on this 5th day of March 2021

(Signed)

René M. Vargas M., Registrar, Geneva