



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2022/091

Judgment No.: UNDT/2022/104

Date: 10 October 2022

Original: English

Before: Judge Eleanor Donaldson-Honeywell

Registry: Nairobi

Registrar: Abena Kwakye-Berko

KARKI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:

Joseph Amisi

Counsel for the Respondent:

Nicole Marisa Maclennan, UNHCR

Francisco Navarro, UNHCR

Introduction and Procedural History

1. The Applicant joined the United Nations High Commissioner for Refugees (“UNHCR”) on 12 March 2014 and served on temporary appointments until 2018.
2. On 15 January 2021, the Applicant was appointed as Resettlement and Complementary Pathways Officer, (P-3) at UNHCR’s Field Office in Nyamata, Rwanda.
3. Following an investigation and disciplinary process for misconduct, on 17 June 2022, the High Commissioner decided to impose on the Applicant the disciplinary measure of dismissal.
4. On 18 September 2022, the Applicant filed an application, dated 13 September 2022, to contest the High Commissioner's decision.
5. The Respondent filed a Motion for Summary Judgment on 20 September 2022 on the basis that the application is not receivable *ratione temporis*.
6. On 28 September 2022, the Applicant filed a Motion for Extension of Time to comply with the directions of this Tribunal issued upon the filing of the Respondent’s Motion.
7. The Tribunal granted the Applicant’s Motion on 30 September 2022 and ordered that his response be submitted on 5 October 2022 by 5.00 p.m. (Nairobi time). The applicant complied with this direction.
8. The Applicant also filed a Motion for Anonymity on 5 October 2022 requesting the Tribunal to carry on all further proceedings without publicly disclosing his name and the medical information included with the said Motion.

Considerations

The Applicant’s motion for anonymity

9. The applicant's motion for anonymity is dismissed as its contents and attachments are not relevant to the issues raised in the summary judgment motion. There will be no reference to the information in the Applicant's said motion in this Judgment.

The Respondent's Motion for Summary Judgment

Article 8(1)(d)(ii) of the UNDT Statute stipulates that,

An application shall be receivable if:

...

(d) The application is filed within the following deadlines:

... (ii) In cases where a management evaluation of the contested decision is not required, within 90 calendar days of the applicant's receipt of the administrative decision.

10. The Applicant was notified of the decision in writing by email dated 17 June 2022.¹ He acknowledges receipt of the attached letter by return of email dated the same day.² Accordingly, he was required to file his application by 15 September 2022.

11. The application is dated 13 September 2022. However, the Applicant filed it on 18 September 2022. Indeed, the records of the UNDT's Court Case Management System ("CCMS") indicate that the application was filed on 18 September 2022.

12. The application was not filed within the deadlines stipulated by the Tribunal's Statute.

13. Article 8.3 of the UNDT Statute allows the UNDT to waive the deadline for the filing of an application in exceptional cases. However, in terms of the jurisprudence of the United Nations Appeals Tribunal ("UNAT"), an application for waiver ordinarily must be filed before the application is filed and not afterwards.³ In the current case, the Applicant did not

¹ Application, part V.

² Reply, Annex R/1.

³ Khisa 2018-UNAT-883, para. 17; Cooke 2012-UNAT-275, para. 30.

request a waiver of the deadline before filing his late application or in the late application itself.

14. This application is time-barred and cannot be considered further by this Tribunal. The Respondent's motion for summary judgment succeeds on that basis.

Conclusion

15. The application is rejected as irreceivable.

(Signed)
Judge Eleanor Donaldson-Honeywell
Dated this 10th day of October 2022

Entered in the Register on this 10th day of October 2022

(Signed)
Abena Kwakye-Berko, Registrar, Nairobi