



Before: Judge Eleanor Donaldson-Honeywell

Registry: Nairobi

Registrar: Abena Kwakye-Berko

AZZAM

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Sandra Lando, UNHCR

Marisa MacLennan, UNHCR

Introduction

1. The Applicant is a Senior Cash Based Intervention Assistant with the United Nations High Commissioner for Refugees (“UNHCR”). He serves at the G-5 level on a fixed-term appointment and is based in Qamishli, Syria.

Facts

2. On 10 January 2022, the Applicant filed an application with the United Nations Dispute Tribunal sitting in Nairobi to challenge the Respondent’s selection decision for the G-6 Programme Associate position in the Qamishli Sub-Office (Job Opening 25442 Position no. 10030472).

3. On 31 January 2022, the Respondent moved for summary judgment against the application on grounds that the Applicant failed to seek management evaluation of the impugned decision within the statutory period of 60 days.

4. The Applicant responded to the Respondent’s motion on 20 April 2022. The Applicant concedes that his application was filed “69 days after the appointment decision was distributed.”

Considerations

5. Having reviewed the application, the Tribunal considers that the primary issue to be determined is its receivability. The issue of receivability is one which in appropriate cases, such as this one, the Tribunal may determine on a priority basis with or without the Respondent’s reply.¹

6. In this case, the Applicant was given the opportunity to respond to the Respondent’s motion for summary judgment; and he did.

7. The Applicant admits in all his filings that his Management Evaluation Request (“MER”) dated 29 August 2021 was nine days late, since the decision was made on 21 June 2021. However, he submits that his delay in submitting the MER

¹ *Morales* UNDT/2019/158, *Cherneva* UNDT/2021/101.

was the fault of the Organization.

8. The Applicant contends that the delay was caused by UNHCR's failure to respond to numerous queries from him questioning the decision. It took UNHCR 19 days to release the documents pertaining to his written test, and a further eight days to respond to his request that his written test be reviewed by Human Resources. It was in this response that he was advised to file for management evaluation, which he did. The Applicant submits that he filed for management evaluation as soon as he was advised that this was the correct course of action and of the procedure.

9. Staff rule 11.2(c) provides that:

A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested. The deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

10. It is established by United Nations Appeals Tribunal ("UNAT") jurisprudence, including *Babiker* 2016-UNAT-672, that the Dispute Tribunal may only review decisions that have been the subject of a proper and timely request for management evaluation. UNAT affirmed that in so doing

34. ... the UNDT correctly recognized that determining "the date on which [the Applicant] received notification of the administrative decision to be contested" was its first task.

11. In all the circumstances, the response to the Applicant's MER, informing him that his management evaluation request was not receivable due to being filed out of time was, in my view, correct.

12. The management evaluation review did, however, result in a finding that the Applicant's candidature was not given "full and fair consideration." One of the Applicant's answers was not captured in the PDF document that was marked by the two assessors. As a result, he lost out on the 10 marks that would have caused him to pass the written assessment and move on to the interview stage of the selection

exercise. The response he received to his MER included an admission that there was some unfair oversight in the assessment of his written test. The Deputy High Commissioner went on to apologise for the error and recommended compensation in the amount of USD425.

13. Be that as it may, the Tribunal has no jurisdiction to extend or waive the time and determine the application on its merits. The procedure and time limits under art. 8.1(c) of the UNDT Statute and 11.2(c) of the Staff Rules are to be strictly enforced. Thus, the Respondent's motion must be upheld, and the application dismissed as not receivable.

14. The Tribunal has no jurisdiction to determine this application on the merits as it challenges a decision that was not submitted for management evaluation in a timely manner.

15. The Tribunal's determination, in the circumstances, is that the application was filed without being preceded by a timely filing of a request for management evaluation.

16. The application is therefore not receivable *ratione temporis*.

Conclusion

17. The application is dismissed as not receivable.

(Signed)

Judge Eleanor Donaldson-Honeywell

Dated this 18th day of October 2022

Entered in the Register on this 18th day of October 2022

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi