



Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: René M. Vargas M.

MUSHUMBA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Sandra Lando, UNHCR

Francisco Navarro, UNHCR

Introduction

1. The Applicant, an Administration Officer at the Office of the United Nations High Commissioner for Refugees (“UNHCR”) in Warsaw, contests the decision of the High Commissioner to impose on him the disciplinary measure of separation from service, with compensation in lieu of notice, and without termination indemnity, for having engaged in sexual harassment and conduct unbecoming of an international civil servant.

2. For the reasons below, the Tribunal finds that the application is not receivable *ratione temporis*.

Facts

3. By email dated 20 March 2023, the Applicant received the disciplinary measure from the High Commissioner.

4. On 21 June 2023, the Applicant filed the instant application contesting the disciplinary measure.

5. On 26 June 2023, the Tribunal served the application on the Respondent.

6. On 10 July 2023, the Respondent filed a motion for summary judgment on receivability, pursuant to art. 9 of the Tribunal’s Rules of Procedure.

7. By email dated 11 July 2023, the Tribunal asked the Applicant to comment on the receivability issue raised by the Respondent, which he did on 17 July 2023.

Consideration

Receivability of the application

8. The Respondent argues that the application is not receivable *ratione temporis* because the Applicant failed to file it within 90 days of receipt of the contested decision, and requests the application be dismissed in a summary judgment, pursuant to art. 9 of the Tribunal’s Rules of Procedure.

9. According to art. 8(1)(d)(ii) of the Tribunal's Statute,

1. 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. Art. 8.3 of the Tribunal's Statute authorizes the UNDT to waive the time limits for filing applications if requested by an applicant, in exceptional cases, and only for a limited period:

3. The Dispute 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. The Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.

11. Having received the notification of the disciplinary measure on 20 March 2023, the Applicant should have filed his application at the latest by 19 June 2023. The evidence on record shows, however, that the Applicant only filed his application on 21 June 2023.

12. In his submission dated 17 July 2023, the Applicant recognized his lateness and asked the Tribunal to exceptionally receive his application for several reasons, namely:

a. Despite the sanction letter being dated 15 March 2023, it was only sent to the Applicant's email on 20 March 2023;

b. Even though the Applicant had asked the Administration to send official communication to his private email, the sanction letter was sent to his official UN email address, which he has trouble accessing;

c. The Applicant started his application to the UNDT on 17 June 2023, but due to technical issues and challenges in understanding the application technicalities and platform, he was only able to succeed on the early hours of 21 June 2023. The Applicant claims that his lateness does not signify an after-thought, but rather practical and justifiable challenges; and

d. The Applicant could not obtain legal representation from OSLA or from a private counsel, which is why he is self-represented and filed his application at the last minute.

13. The above assertions are not supported by evidence, and the Applicant did not explain how the alleged challenges impacted his ability to timely file his application.

14. It is an established principle that time limits are to be strictly enforced for filing applications and appeals (*Cooke* 2012-UNAT-275, para. 25-28; *Lolo Mkhabela* 2022-UNAT-1289, para. 34), and that lateness even by several minutes, several hours, or several days is irrelevant (*Temu* UNDT/2020/172, para. 12).

15. Requests for extensions of time or to waive the statutory time limit to file an application may be considered if exceptional circumstances justify it. The Appeals Tribunal has defined them as circumstances beyond the Applicant's control preventing him or her from timely exercising the right to appeal (*El-Khatib* 2010-UNAT-029, para. 14; *Muratore* 2012-UNAT-191, para. 40).

16. While there are circumstances where a request for a waiver may exceptionally be filed after the time limit has run out, they must show that the Applicant was not able to file such request beforehand, like a technical failing of the Court Case Management System or a medical incapacity (*Hoyce Temu* 2021-UNAT-1174, para. 40)

17. However, in the instant case, not only the “challenging” context that the Applicant described is unsupported by evidence, but he also never requested an extension of time to file his application nor a waiver of the statutory time-limit. Assuming that the Applicant’s comments filed on 17 July 2023 are, in fact, his request for a waiver after the time-limit, he also did not explain why he was not able to file such request beforehand.

18. Indeed, the Applicant only raised the alleged challenges in filing the application when faced with the Respondent’s request to have it dismissed on receivability grounds, and his allegations also do not meet the standard of exceptional circumstances.

19. In this context, it is clear that the Applicant is effectively requesting the Tribunal to receive an application that is time-barred for no exceptional reason.

20. It follows that the application is not receivable *ratione temporis*.

Conclusion

21. In view of the foregoing, the Tribunal DECIDES to dismiss the application.

(Signed)

Judge Sun Xiangzhuang

Dated this 28th day of July 2023

Entered in the Register on this 28th day of July 2023

(Signed)

René M. Vargas M., Registrar, Geneva