



Before: Judge Francis Belle

Registry: Nairobi

Registrar: Abena Kwakye-Berko

KHAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:

Salim U. Shaikh

Counsel for Respondent:

Alister Cumming, UNICEF

Introduction

1. The Applicant filed an application on 10 January 2023 to challenge a decision by the United Nations Children’s Fund (“UNICEF”) to impose on him the disciplinary measure of dismissal, in accordance with staff rule 10.2(a)(ix).
2. The Respondent filed his reply on 9 February 2023 in which he claimed that the application was not receivable because the application was not filed in a timely manner. The application was therefore not receivable *ratione temporis*.
3. The Applicant joined UNICEF on 1 April 2020 as a Security Officer in Peshawar, Pakistan. On 1 February 2022, the Applicant was sent on loan to the United Nations Population Fund (“UNFPA”) in Addis Ababa, Ethiopia.
4. On 4 January 2021, UNICEF’S Office of Internal Audit and Investigations (“OIAI”) received a report of possible misconduct involving the Applicant. The Applicant was subsequently informed that OIAI was investigating the allegations, and the Applicant was interviewed. On 30 June 2022, OIAI submitted its report and on 30 June 2022 the Applicant was served with the report. On 17 August 2022, the Applicant was charged with misconduct.
5. According to the official records the Applicant was informed of the outcome of the investigation and informed of the charges against him. He requested an extension of time and responded to the charges against him from his official UNICEF account.
6. On 10 October 2022, it was decided that the charges were proved by clear and convincing evidence and that the Applicant should be dismissed from his position at UNICEF. On 11 October 2022, the Applicant was officially notified of his dismissal for misconduct. The notification was sent to his UNICEF account.
7. On 8 January 2023, the Applicant applied for an extension of time to file his application. He argued that he did not receive the notice of dismissal until 26 October 2022. The application for extension of time was denied by the Tribunal and, on 10 January 2023, the Applicant filed his application.

8. The Applicant had argued that his ability to respond by email was disrupted by severe flooding in Pakistan and he did not receive the notice of dismissal until 26 October. However, the Applicant had responded to the charges against him by email from his UNICEF office in September 2022 and the reports of the flooding show that they took place in July and August 2022. Consequently, without more information the Tribunal agrees that the Applicant's submission that he was unable to receive and reply to emails until 26 October 2022 is unsubstantiated.

The UNDT'S Rules on Receivability

9. Article 34 of the Tribunal's Rules of Procedure state:

The time limits prescribed in the rules of procedure:

- (a) Refer to calendar days and shall not include the day of the event from which the period runs;
- (b) Shall include the next working day of the Registry when the last day of the period is not a working day;
- (c) Shall be deemed to have been met if the documents in question were dispatched by reasonable means on the last day of the period.

10. The Applicant submitted his application for an extension of time in accordance with art. 35 of the Tribunal's rules but such extension was denied. The Applicant did not make any other application for the waiver of the relevant rules.

11. The Tribunal agrees with the Respondent's submission that,

the Applicant was informed on 11 October 2022 that he would shortly receive a decision letter regarding his disciplinary case. On the same day, the letter was emailed to the Applicant's official UNICEF email account at 09:25, Eastern Standard Time i.e. 19:25 Pakistan Standard Time. The Applicant was therefore notified of the contested decision on 11 October 2022.

12. The Applicant was required to submit his application in 90 days. When counting from 12 October 2022, the period ends on 9 January 2023. The Applicant submitted his application on 10 January 2023. In the circumstances the application is deemed not receivable *ratione temporis*.

13. The Applicant waited until the time had almost expired to make his application for an extension of time. Unfortunately, by the time he submitted his

application the time had expired. In the circumstances there is no reason to afford any waiver or extension to the time limit for filing the application required by the UNDT's Rules of Procedure.

Conclusion

14. The application is therefore dismissed as irreceivable *ratione temporis*.

(Signed)

Judge Francis Belle

Dated this 31st day of July 2023

Entered in the Register on this 31st day of July 2023

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi